Supreme Court, U. S.
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APPENDIX

In the Supreme Court of the United States

OCTOBER TERM 1976

No. 75-6297

RAMON MARTIN FIALLO, ETC., ET AL., APPELLANTS,

v.

EDWARD H. LEVI, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE UNITED STATES, ET AL., APPELLEES

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

FILED MARCH 1, 1976
PROBABLE JURISDICTION NOTED JUNE 7, 1976

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RELEVANT DOCKET ENTRIES
NO. 74C 1083

Dates	
7/22/74	Complaint filed.
10/25/74	Defendants' Notice of Motion for dismissal of action filed.
11/27/74	Plaintiffs' Notice of Motion filed for Three-Judge Court, Class Action, and Intervention and Joinder, with Affidavits and other attachments in support.

11/27/74	Amended Complaint filed.
12/23/74	Before Weinstein, J.—Case called. Motion to dismiss argued. Decision reserved. Motion for intervention and joinder is granted. Motion for three-judge court argued and decision reserved.
1/23/75	By Weinstein, J.—Memorandum and Order dated January 23, 1975, filed that a three-judge court must be convened and that plaintiffs' motion for class action certification is deferred for consideration by three-judge court.
3/7/75	Stipulation between parties as to class action numerosity, dated February 21, 1975, with remark by Weinstein, J. dated March 6, 1975.
5/9/75	Designation of Judges dated May 7, 1975, signed by Ch. J. Kaufman of Court of Appeals, designating Judges Weinstein, Bramwell, and Cir. J. Moore pursuant to 28 U.S.C. §§2282 and 2284 filed.
8/8/75	Plaintiffs' Notice of Motion filed for Class Action Certification, Summary Judgment, and Permanent Injunction with Rule 9(g) Statement, Affidavits and other attachments in support.
8/18/75	Defendants' Notice of Motion to dismiss filed.
9/4/75	Before Weinstein, Bramwell, and Moore—Case called. Motions argued. Decision reserved.
11/28/75	By Moore and Bramweli, J.—Opinion and Order refusing to find above case unconstitutional filed.
11/28/75	By Weinstein, J.—Dissenting Opinion filed.
12/1/75	Judgment dated December 1, 1975, dismissing the complaint filed.
12/31/75	Notice of Appeal to the Supreme Court of the United States filed.
6/14/76	Certified copy of Order from the Supreme Court granting probable jurisdiction for appeal filed.
6/14/76	Certified copy of Order from the Supreme Court allowing appellants to proceed in forma pauperis filed.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

RAMON MARTIN FIALLO, An infant by his Mother, CELIA FRANCISCA MICHAEL RODRIGUEZ, and RAMON AUGUSTO RAFAEL FIALLO-SONE; CLEOPHUS RUPERT WARNER and SERGE PATRICK WARNER, An infant by his father, CLEOPHUS RUPERT WARNER; TREVOR ASTON WILSON and EARL ANTONIO WILSON, Infants by their aunt and next friend LENA HUDSON, and ARTHUR CECIL WILSON, on behalf of themselves and all other persons similarly situated,

Plaintiffs,

—against—

WILLIAM SAXBE, individually and as Attorney General of the United States; LEONARD E. CHAPMAN, Jr., individually and as Commissioner of the Immigration and Naturalization Service; MAURICE KILEY, individually and as District Director of the Immigration and Naturalization Service for New York City; HENRY KISSINGER, individually and as Secretary of State of the United States; BARBARA N. WATSON, individually and as Administrator of the Bureau of Security and Consular Affairs, Department of State; JULIO ARIAS, individually and as Director of Visa Office, Bureau of Security and Consular Affairs, Department of State; CATHERINE M. HURLEY, individually and as Consul of the United States of America, Santo Domingo, Dominican Republic,

Defendants.

CIVIL ACTION NO. 74 C 1083

AMENDED COMPLAINT — CLASS ACTION

PRELIMINARY STATEMENT

1. This is a class action for declaratory and injunctive relief pursuant to 28 U.S.C. §§2201 and 2202, and Rules 23, 57 and 65 of the Federal Rules of Civil Procedure to protect the rights of plaintiffs and the class under the First, Fifth and Ninth Amendments to the United States Constitution.

2. By this proceeding, the named plaintiffs, on behalf of themselves and all others similarly situated, seek a judgment declaring unconstitutional and enjoining the enforcement and operation of Immigration and Nationality Act (INA) §101(b)(1) and (2) (8 U.S.C. §1101(b)(1) and (2)) alone and in combination with INA §§212(a)(14) (8 U.S.C. §1182(a)(14)) and INA §201(a) and (b) (8 U.S.C. §1151(a) and (b)), on their face and as applied to plaintiffs and the class.

3. Declaratory and injunctive relief are necessary and appropriate since plaintiff and plaintiff class members will otherwise suffer irreparable injury for which there is no adequate remedy at law.

4. This is a proper case for the convening of a three-judge court pursuant to 28 U.S.C. §§2282 and 2284, in that plaintiffs herein seek an injunction to restrain the defendants from the enforcement, operation and execution of an Act of Congress on the ground that said Act is repugnant to the United States Constitution.

JURISDICTION

5. Jurisdiction is conferred upon this Court by INA §279 (8 U.S.C. §1329) as a civil cause arising under the Immigration and Nationality Law; 28 U.S.C. §1361 as an action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to plaintiff; Section 10 of the Administrative Procedure Act (5 U.S.C. §§702–706) as a proceeding to review agency action which adversely affects or aggrieves a person within the meaning of a relevant statute; 28 U.S.C.

§1331(a), as a controversy arising under the Constitution or laws of the United States where the amount exceeds $10,000.

REGULATORY SCHEME

6. An alien who is allowed to emigrate to the United States and become a permanent resident has the right to remain in the United States indefinitely and to live, work and make a home here.

7. The Immigration Law provides two immigration schemes:

1) Immigrants from independent Western Hemisphere countries are admitted in a "first come-first serve" basis subject to an annual numerical quota for the whole Western Hemisphere (North and South America): INA §101(a)(27)(A) (8 U.S.C. §1101(a)(27)(A)) and §21(e) of Act of October 3, 1965.

2) Immigrants from Eastern Hemisphere countries are subject to annual numerical quotas for each country which are allocated on a preference system. INA §202(a), 203 (8 U.S.C. §§1152(a), 1153.) Immigrants from colonies of Eastern Hemisphere countries, even though located in the Western Hemisphere, are subject to annual numerical quotas set for colonies and allocated on the preference system.

8. "Immediate relatives" of United States citizens may be admitted without regard to any numerical quota. INA §201(a) (8 U.S.C. §1151(a)). "Immediate relatives" are defined as "the children, spouses and parents of a citizen of the United States, provided that in the case of parents, such citizen must be at least twenty-one years of age." INA §201(b) (8 U.S.C. §1151(b)).

9. Persons from both the Eastern and Western Hemisphere, subject to a numerical quota, may not become permanent residents unless the Secretary of Labor has certified to the Secretary of State that the work the alien will perform in the United States is in short supply and will not adversely affect the wages and working conditions of

United States' workers. INA §212(a)(14) (8 U.S.C. §1182(a)(14)).

10. The following are exempt from the "labor certification" requirement:

a) Persons from independent countries of the Western Hemisphere who are the parents, spouses or children of United States citizens or of permanent residents.

b) Persons from Eastern Hemisphere countries or their colonies who meet certain preference category requirements under the preference system. INA §§212(a)(14), 203(a)(1)(2)(4)(5) and (7) (8 U.S.C. §§1182(a)(14); §1153(a)(1)(2)(4)(5) and (7)).

11. The definitions of "parent" and "child" in the Immigration and Nationality Act are applied to determine whether an alien is entitled as a "parent" or a "child" to classification as an "immediate relative" or exemption from the "labor certification" requirement.

12. INA §101(b)(1) (8 U.S.C. §1101(b)(1)) defines a "child" as a legitimate child, a child legitimated under the law of his residence or domicile or under his natural father's residence or domicile before the child reaches the age of eighteen, a child in relationship to his mother, a step-child, whether or not born out of wedlock, if the marriage which creates the step-child status occurred before the child was eighteen, an adopted child if the child was adopted before age fourteen. A child born out of wedlock and not legitimated is not the "child" of his natural father within the meaning of this statutory section.

13. INA §101(b)(2) (8 U.S.C. §1101(b)(2)) defines "parent" as one who bears the relationship to a child as defined in INA §101(b)(1) (8 U.S.C. §1101(b)(1)) (see para. 12 above)). A natural father of a child born out of wedlock and not legitimated is not a "parent" within the meaning of this statutory section.

DEFENDANTS

14. Defendant William Saxbe is the Attorney General of the United States and pursuant to INA §103 (8 U.S.C. §1103) he is charged with the administration and enforcement of the immigration and nationality laws of the United States.

15. Defendant Leonard E. Chapman, Jr., is the Commissioner of the Immigration and Naturalization Service. He has authority co-extensive with that of the Attorney General to direct the administration of the Service and to enforce the immigration law, and has the power to issue regulations necessary or appropriate for the exercise of his authority, INA §103(b) (8 U.S.C. §§1103(b), 1552, 8 C.F.R. §§2.1, 100.2, 100.6).

16. Defendant Maurice Kiley is the District Director of the Immigration and Naturalization Service for New York City. He exercises powers, privileges, and duties co-extensive with those of the Commissioner with respect to the grant or denial of any application or petition submitted to the Service including those submitted on Forms I-130 and I-550, (8 C.F.R. §§100.2, 103.1(f)).

17. Defendant Henry Kissinger is the Secretary of State of the United States and pursuant to INA §104 (8 U.S.C. §1104) he is charged with the administration and enforcement of the immigration and nationality laws of the United States.

18. Defendant Barbara Watson is Administrator of the Bureau of Security and Consular Affairs in the Department of State. She is charged with any and all responsibility and authority in the administration of the Bureau and the Immigration and Nationality Act which are delegated to her by the Secretary of State. INA §104(b) (8 U.S.C. §1104(b)).

19. Julio Arias is the Director of the Visa Office in the Bureau of Security and Consular Affairs. The Visa Office supervises and controls the visa process of consular posts abroad. The Visa Office's interpretation of law is binding on consular officers.

20. Defendant Catherine M. Hurley is the Consul of the United States of America in Santo Domingo, Dominican Republic. She rejected the application by the son, RAMON MARTIN FIALLO, on behalf of his father, RAMON AUGUSTO RAFAEL FIALLO-SONE, on the ground that the

son, RAMON MARTIN FIALLO, was not the legitimate child of the father, RAMON AUGUSTO RAFAEL FIALLO-SONE. Pursuant to INA §221 (8 U.S.C. §1201) she is charged with administration and enforcement of immigration and nationality laws of the United States with regard to the issuance of visas.

NAMED PLAINTIFFS

Ramon Martin Fiallo
and Ramon Augusto Rafael Fiallo-Sone

21. Ramon Martin Fiallo is an infant citizen of the United States, born in New York, New York on January 2, 1971.

22. Celia Francisca Michel Rodriguez is the natural mother of Ramon Mart n Fiallo and brings this action in his behalf.

23. Ramon Augusto Rafael Fiallo-Sone is the natural father of Ramon Martin Fiallo and his name appears on Ramon Martin Fiallo's birth certificate.

24. Shortly after Ramon Martin Fiallo's birth, Ramon Augusto Rafael Fiallo-Sone assumed the role of primary caretaker and constant companion to his son, Ramon Martin Fiallo. He continues that role to date.

25. Celia Francisca Michel Rodriguez assumed and continues to date the role of bread-winner.

26. Ramon Fiallo-Sone and Celia Francisca Michel Rodriguez are not married.

27. Ramon Martin Fiallo is a pre-school age child and is very dependent upon and attached to his father.

28. Ramon Augusto Rafael Fiallo-Sone is a citizen of the Dominican Republic.

29. Ramon Augusto Rafael Fiallo-Sone entered the United States in December of 1964 as a visitor and was given permission to depart from the United States voluntarily.

30. A Form FS 497A, 'Preliminary Questionnaire to Determine Immigrant Status,' was submitted on behalf of Ramon Fiallo-Sone to the U.S. Consulate in the Dominican

Republic, the proper preliminary step for obtaining an immigrant visa and permanent resident status for a Western Hemisphere father of a United States citizen child under twenty-one.

31. Consul Catherine M. Hurley returned the Form FS 497A and wrote a letter stating that Ramon Martin Fiallo was not eligible for an immigrant visa and permanent resident status without a "labor certificate" on the basis of his relationship to his citizen son because his son was not his legitimate issue.

32. The date stamp on the returned Form FS 497A indicated that the Form had been received in the U.S. Embassy at Santo Domingo, Dominican Republic on January 25, 1974.

33. Plaintiffs, Ramon Martin Fiallo and Ramon Augusto Rafael Fiallo-Sone reside in Brooklyn, New York.

Serge Patrick Warner and Cleophus Rupert Warner

34. Cleophus Rupert Warner is a naturalized citizen of the United States of America, having been naturalized in the District Court of the United States for the Eastern District of New York, on April 26, 1966, under Certificate Number 8941869.

35. Serge Patrick Warner is the son of Cleophus Rupert Warner and was born on February 23, 1960, in the Commune De Saint-Martin, Departement de la Guadeloupe, St. Martin, French West Indies.

36. Cleophus Rupert Warner was never married to Serge Patrick Warner's natural mother, Elenore Carmelie Gibs.

37. Shortly after the birth of Serge Patrick Warner, Cleophus Rupert Warner registered as his father and acknowledged paternity and his name therefore appears on the Birth Certificate of Serge Patrick Warner.

38. Cleophus Rupert Warner has supported and maintained Serge Patrick Warner from his birth until the present time and intends to continue to do so in the future.

39. Serge Patrick Warner entered the United States as a visitor on August 22, 1969, solely with the intention of visit-

ing his father, Cleophus Rupert Warner. Shortly after Serge Warner's entry into the United States, his mother married and informed Cleophus Rupert Warner that she was moving to a new address and requested him to keep their son, Serge Patrick Warner.

40. Cleophus Rupert Warner filed a Form I-130, "Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa", with the Immigration and Naturalization Service in New York City, the proper preliminary step for obtaining an immigrant visa and permanent resident status for an unmarried child under twenty-one of a United States citizen.

41. The petition was rejected on March 2, 1972 on the grounds that it was mandatorily deniable under INA §101(b) because Serge Patrick Warner was not the legitimate or legitimated issue of Cleophus Warner.

42. Cleophus Rupert Warner also attempted to regularize Serge Patrick Warner's status by writing to the U.S. Consul in the French West Indies. In response, he was informed that he must obtain an approved I-130 Petition before the Consul would take any action.

43. Exclusion proceedings are now pending against Serge Patrick Warner.

44. Serge Patrick Warner continues to reside with his father, Cleophus Rupert Warner, in the Borough of Queens, City and State of New York. Cleophus Rupert Warner continues to support and maintain his son, Serge Patrick Warner.

45. Serge Patrick Warner desires to remain in the United States with his father, Cleophus Rupert Warner.

Trevor Aston Wilson, Earl Antonio Wilson and Arthur Cecil Wilson

46. Plaintiff Trevor Aston Wilson is a permanent resident of the United States, No. A 17 564 218.

47. Plaintiff Earl Antonio Wilson is a permanent resident of the United States, No. A 17 564 217.

48. Plaintiff Arthur Cecil Wilson is a native and citizen of Jamaica.

49. Trevor Aston Wilson was born on June 19, 1957, and his brother, Earl Antonio Wilson, was born on January 6, 1959 to Leonie (Leony) (Muckle) Moses and Arthur Cecil Wilson.

50. Arthur Cecil Wilson and Leonie (Muckle) Moses were never married.

51. Trevor Aston Wilson and Earl Antonio Wilson recognize Arthur Cecil Wilson as their father and Arthur Cecil Wilson acknowledges the paternity of Trevor Aston Wilson and Earl Antonio Wilson.

52. From the time of their births until 1968, Trevor Aston Wilson and Earl Antonio Wilson lived with and were maintained by their natural father, Arthur Cecil Wilson.

53. Subsequent to 1968, Trevor Aston Wilson and Earl Antonio Wilson have maintained a relationship with their natural father, Arthur Cecil Wilson, by visits and letters and Arthur Cecil Wilson has contributed to their support.

54. On September 15, 1974, Leonie (Leony) (Muckle) Moses died in New York City, New York.

55. Upon the death of their mother, Leonie (Leony) (Muckle) Moses, Trevor Aston Wilson and Earl Antonio Wilson requested that their father, Arthur Cecil Wilson come to the United States.

56. Arthur Cecil Wilson obtained an emergency visa and entered the United States.

57. Trevor Aston Wilson and Earl Antonio Wilson desire to stay in the United States, continue their education and eventually become citizens.

58. Trevor Aston Wilson and Earl Antonio Wilson desire and need their father, Arthur Cecil Wilson, to live with and maintain them in the United States.

59. Trevor Aston Wilson, as the oldest child, submitted a Form I-550 to the Immigration and Naturalization Service, the proper preliminary procedure for obtaining an immigrant visa and permanent resident status for a parent of a United States permanent resident unmarried child under twenty-one.

60. Arthur Cecil Wilson left the United States when the extensions he was able to obtain on his visa expired. He returned to Jamaica because without permanent resident status he could not obtain a job in the United States and he felt that in Jamaica he could work and contribute something to the support of his children. He also did not want to violate the law by overstaying the time period allowed.

61. He and his sons desire that he return to the United States as a permanent resident so he may maintain a home and family and work here.

CLASS ACTION ALLEGATIONS

62. Plaintiffs bring this action as a class action pursuant to Rule 23(a) and in addition, Rule 23(b)(2) or in the alternative, Rule 23(b)(1)(A) or (B) of the Federal Rules of Civil Procedure.

63. This class is composed of all United States citizen natural fathers and their alien children born out of wedlock and not legitimated and all United States citizen and permanent resident children born out of wedlock and not legitimated and their alien natural fathers who are denied the following statutory benefits because they fail to satisfy the statutory definitions of "parent" and "child" under the Immigration and Naionality Act:

1) the classification of a child of a United States citizen father as an "immediate relative," and

2) the exemption from the requirement of a "labor certification" of the father of a United States citizen or of a permanent resident child.

64. The class is so numerous that joinder of all members is impracticable. Rule 23(a)(1).

65. There are questions of law and fact common to the class, that is, whether the United States statutes challenged herein comport with minimal constitutional requirements under the First, Fifth, and Ninth Amendments to the United States Constitution as detailed in paragraphs 70 through 72 herein. Rule 23 (a)(2).

66. The claims of the representative plaintiffs are typical of the claims of the class. Rule 23(a)(3).

67. THE LEGAL AID SOCIETY of New York City, attorney for the plaintiffs, has legal resources and experience adequate to protect all members of the class, and the representative plaintiffs will fairly and adequately protect the interests of the class. Rule 23(a)(4).

68. In denying the status of "parent" and "child" to the plaintiffs herein pursuant to the Immigration and Nationality Act, the defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole. Rule 23(b)(2).

69. The prosecution of separate actions by individual members of the class would create a risk of varying adjudications with respect to individual members of the class which might establish incompatible standards of conduct for the defendants in this action, and would create a risk of adjudications with respect to individual members of the class that would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests. Rule 23(b)(1)(A) and (B).

STATEMENT OF CLAIMS

70. INA §101(b)(1) and (2) (8 U.S.C. §1101 (b)(1) and (2)), alone, and in combination with INA §212(a)(14) (8 U.S.C. §1182(a)(14)), and INA §201(a) and (b) (8 U.S.C. §1151(a) and (b)), are, on their face and as applied to plaintiffs and class members, unconstitutional as violative of the equal protection principles of the Due Process Clause of the Fifth Amendment to the United States Constitution in that they discriminate against natural fathers and their children born out of wedlock and not legitimated on the basis of the father's marital status, the illegitimacy of the child and the sex of the parent without either compelling or rational justification.

71. INA §101(b)(1) and (2) (8 U.S.C. §1101(b)(1) and (2)), alone, and in combination with INA §212(a)(14) (8 U.S.C. §1182(a)(14)), and INA §201(a) and (b) (8 U.S.C. §1151(a) and (b)), are, on their face and as applied to plaintiffs and class members, unconstitutional as violative of the Due Process Clause of the Fifth Amendment to the United States Constitution in that they create an unwarranted conclusive presumption of the absence of strong psychological and economic ties between natural fathers and their children born out of wedlock and not legitimated.

72. INA §101(b)(1) and (2) (8 U.S.C. §1101(b)(1) and (2)), alone, and in combination with INA §212(a)(14) (8 U.S.C. §1182(a)(14)), and INA §201(a) and (b) (8 U.S.C. §1151(a) and (b)), are, on their face and as applied to plaintiff and class members, unconstitutional and violative of the First, Fifth and Ninth Amendments to the United States Constitution in that they seriously burden and infringe upon the rights of natural fathers and their children, born out of wedlock and not legitimated, to mutual association, to privacy, to establish a home, to raise natural children and to be raised by the natural father.

RELIEF REQUESTED

WHEREFORE, plaintiffs, on behalf of themselves and all the members of the class, respectfully pray that this Court:

1. Assume jurisdiction of this cause and convene a three-judge court pursuant to 28 U.S.C. §§2282 and 2284.

2. Determine by order, pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure, that this action be maintained as a class action.

3. Pursuant to 28 U.S.C. §§2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure, enter a judgment declaring that Section 101(b)(1) and (2) of the Immigration and Nationality Act (8 U.S.C. §1101(b)(1) and (2)) alone, and in combination with INA §212(a)(14) (8 U.S.C. §1182(a)(14)) and INA §201(a) and (b) (8 U.S.C. §1151 (a) and (b)), are unconstitutional, on their face and as applied to the plaintiffs and the class herein, as violative of the First, Fifth and

Ninth Amendments to the United States Constitution in the respects detailed in this amended complaint.

4. Enter a permanent injunction restraining the defendants, their officers, agents, servants, employees, and successors in office, from:

a) enforcing, applying or relying upon INA §101(b)(1) and (2) (8 U.S.C. §1101(b)(1) and (2)), alone or in combination with INA §212(a)(14) (8 U.S.C. §1182(a)(14)) and INA §201(a) and (b) (8 U.S.C. §1151(a) and (b)), in their unconstitutional aspects as detailed in this amended complaint, for purposes of determining immediate relative status or exemption from labor certification requirement.

b) failing to afford the plaintiffs whatever immigrant status they would have had but for the unconstitutional application of statutes challenged herein.

5. Pursuant to Rule 54(d) of the Federal Rules of Civil Procedure allow plaintiffs reasonable attorneys' fees and their costs and disbursements herein and also grant them and the members of their class such additional and alternative relief as may seem to this court to be just, proper and equitable.

DATED: New York, New York
November 21, 1974

Respectfully submitted,

KALMAN FINKEL, *Attorney-in-Charge*
THE LEGAL AID SOCIETY
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

74 C 1083

MEMORANDUM AND ORDER

RAMON MARTIN FIALLO, ET AL.,
Plaintiffs

against

WILLIAM SAXBE, ET AL.,
Defendants

----------x

APPEARANCES:
JANET M. CALVO,
of the Legal Aid Society
Attorney for Plaintiffs
(MORTON B. DICKER, ANNETTE ELSTEIN, JULIUS BIERVLIET, JOHN E. KIRKLIN, and ANITA FISHER BARRETT, of the Legal Aid Society, on the briefs)

DAVID G. TRAGER, ESQ.
United States Attorney, Eastern District of New York
By: DOUGLAS J. KRAMER, ESQ.
Assistant United States Attorney
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WEINSTEIN, D. J.

Plaintiffs are non-citizen fathers of illegitimate citizens or resident children and non-citizen illegitimate children of citizen fathers. They challenge the constitutionality of the definitions of "parent" and "child" favoring mothers over

fathers found in the Immigration and Naturalization Laws, 8 U.S.C. §1101(b)(1) and (2), and seek a three-judge court. 28 U.S.C. §2282. Discriminations between males and females are coming under increased scrutiny. Legal distinctions once accepted are no longer constitutional in view of rapidly changing mores. *See, e.g., Taylor* v. *Louisiana*, U.S. , Sup.Ct. , L.Ed.2d (No. 73-5744) (January 21, 1975) (separate rules on jury qualification for men and women no longer valid). For the reasons indicated below, a three-judge cou must consider the issues.

Insofar as pertinent, the statute reads:

> "(1) The term 'child' means an unmarried person under twenty-one years of age who is—
>
> (A) a legitimate child; or
>
> ***
>
> (D) an illegitimate child, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother;
>
> ***
>
> (2) The terms 'parent', 'father', or 'mother' mean a parent, father, or mother only where the relationship exists by reason of any of the circumstances set forth in subdivision (1) of this subsection."

I. *PLAINTIFFS' CONTENTIONS*

Immigrants are admitted to the United States on a strict numerical quota system, which makes admission difficult, but "immediate relatives" of United States citizens, including children and parents are admitted without regard to the quota system. 8 U.S.C. §1151 (a)(b). However, fathers of illegitimate children are excluded from the definition of "parent" and illegitimate children of citizen fathers are excluded from the definition of "child". Thus if an illegitimate child is a native or naturalized United States citizen, the child's natural father cannot be admitted to the

United States except via the quota system. And if the father of the illegitimate child is a naturalized or native United States citizen, the child cannot be admitted, except through the quota system. The law allows the mothers of illegitimate citizen children and the illegitimate children of citizen mothers to be admitted without regard to the quota system.

Plaintiffs claim violations of the Fifth Amendment equal protection and due process principles. They state that the law discriminates without justification on the basis of sex and illegitimacy, and establishes an invalid conclusive presumption that there are no psychological and economic ties between illegitimate children and their fathers.

II. *STANDARD FOR CONVENING THREE-JUDGE COURT*

A three-judge court must be convened if the claim meets the slight burden of substantiality described in Goosby v. Osser, 409 U.S. 512, 518, 93 S.Ct. 854, 858-59 (1973):

> "Constitutional insubstantiality for this purpose has been equated with such concepts as 'essentially fictitious,' 'wholly insubstantial,' 'obviously frivolous,' and 'obviously without merit.' The limiting words 'wholly' and 'obviously' have cogent legal significance. In the context of the effect of prior decisions upon the substantiality of constitutional claims, those words import that claims are constitutionally insubstantial only if the prior decisions inescapably render the claims frivolous; previous decisions that merely render claims of doubtful or questionable merit do not render them insubstantial for the purposes of 28 U.S.C. §2281. A claim is insubstantial only if 'its unsoundness so clearly results from the previous decisions of this court as to foreclose the subject and leave no room for the inference that the question sought to be raised can be the subject of controversy.' " [Citations omitted]

See, also, Hagans v. *Lavine*, 415 U.S. 528, 537-38, 94 S.Ct. 1372, 1379. (1974).

While this court must, in the interests of judicial economy, carefully scrutinize a request to convene a

three-judge court (*Bynum v. Connecticut Commission on Forfeited Rights*, 410 F.2d 173 (2d Cir. 1969)), the most recent case in this circuit repeats the *Goosby* formulation, and reiterates that a "fairly low standard applies." *Finnerty* v. *Cowen*, No. 74-1668, Slip Op. 848 (2d Cir. Dec. 16, 1974).

III. *APPLICABILITY OF THE "POLITICAL QUESTION" DOCTRINE*

The government argues that there is no basis for a three-judge court. It contends that the classification of aliens for the purpose of exclusion is a "political question" which courts have traditionally avoided. The courts in the past have adhered to such a policy, beginning with *Choe Chan Ping* v. *United States*, (The Chinese Exclusion Case), 130 U.S. 581, 609, 9 S.Ct. 623 (1889). In *Lew Moon Sing* v. *United States*, 158 U.S. 538, 547, 15 S.Ct. 967, 970 (1895), for example, the court concluded that:

> "The power of Congress to exclude aliens altogether from the United States, or to prescribe the terms and conditions upon which they may come to this country, and to have its declared policy in that regard enforced exclusively through executive officers, without judicial intervention, is settled by our previous adjudications."

This position was most recently restated by the Supreme Court in *Kleindienst* v. *Mandel*, 408 U.S. 757, 92 S.Ct. 2576 (1972), a case which challenged on First Amendment grounds the Attorney General's failure to admit an advocate of Communism. *See, also, Harisiades* v. *Shaughnessy*, 342 U.S. 580, 588-89, 72 S.Ct. 512 (1952) (upheld deportation of Communist Party members); *Galvan* v. *Press*, 347 U.S. 522, 74 S.Ct. 737 (1954) (deportation case); *Hitai* v. *Immigration and Naturalization Service*, 343 F.2d 466, 467 (2d Cir.), *cert. denied*, 382 U.S. 816 (1965) (upheld special quota for Japanese immigrants); *Faustino* v. *Immigration and Naturalization Service*, 302 F.Supp. 212 (1969), *aff'd. 432 F.2d 429 (2d Cir. 1970), cert. denied*, 401 U.S. 921 (1971) (court refused to convene a three-judge court because equal protection arguments concerning immigration classifications based upon age of child were insubstantial).

But these cases must be read in the light of the Supreme Court's most recent pronouncement on the reviewability of immigration laws in *Almeida-Sanchez* v. *United States*, 413 U.S. 266, 93 S.Ct. 2535 (1973). The court found unconstitutional a provision in the immigration laws allowing warrantless border searches. In the face of a dissent which asserted, citing *Mandel, supra*, that congressional opinion as to the constitutionality of a statute must be accepted when that statute deals with the exclusion of aliens, the majority held that "no Act of Congress can authorize a violation of the Constitution," and that in the immigration field, as in others, "a resolute loyalty to constitutional safeguards" is required. *Almeida-Sanchez, supra*, 413 U.S. at 272, 273, 93 S.Ct. at 2539, 2540. While the fact pattern in Almeida-Sanchez is very different from the case before this court, it is also true that none of the cases cited by the government compares to the fact pattern here.

Plaintiffs further argue that none of the cases cited by the government supports the precise proposition that the constitutionality of an immigration statute relating to the exclusion of aliens is immune from judicial review, where, as here, no foreign policy determination, incapable of being reviewed by judicially discoverable and manageable standards, is involved. Plaintiffs also assert that Congress itself in drafting the act contemplated judicial intervention to the extent necessary to bring it into accord with the Constitution. House Report No. 1365, 82d Cong., 2d Sess., at 6 (1952) ("the right to exclude or expel all aliens or any class of aliens . . . to be regulated . . . by act of Congress . . . except so far as the judicial department . . . is required by the paramount law of the Constitution to intervene"). Plaintiffs claim, too, that the case here is distinguishable from cases cited by the government, since it involves not merely the rights of aliens, to which a "political question" doctrine might be applied, but also the rights of United States citizens and

permanent residents, although their alien relatives also benefit.

Thus, without making any comments on the merits, *Almeida-Sanchez*, *supra*, and the plaintiffs' arguments stated above make plaintiffs' claims "at least arguable" (*Finnerty* v. *Cowen*, No. 74-1668, Slip Op. 849 (2d Cir. Dec. 16, 1974)). On this line of attack the government fails to meet the heavy burden necessary for it to forestall a three-judge court.

IV. *APPLICABILITY OF "CONSULAR NON-REVIEWABILITY" DOCTRINE.*

The government, in its initial brief, argued that the courts could not review the classifications involved in this case under the doctrine of consular non-reviewability. *United States ex rel. Ulrich* v. *Kellog*, 30 F.2d 984 (D.C. Cir.), *cert. denied*, 279 U.S. 868, 49 S.Ct. 482 (1929); *Toza-Bedova* v. *Immigration and Naturalization Service*, 410 F.2d 342 (9th Cir. 1969); *Ticea-Gomez* v. *Pilliod*, 193 F. Supp. 577, 582 (N.D. Ill. 1960). Plaintiffs respond, however, that consuls are not acting within any regulatory or statutory discretion with respect to plaintiffs here, since the statute requires them to exclude the plaintiffs. Thus, plaintiffs argue, there is no proper question of discretion here which would invoke the doctrine. Plaintiffs' position is at least arguable, and so the government fails to preclude a three-judge court review by this tack.

V. *EXHAUSTION OF ADMINISTRATIVE REMEDIES*

The government argues that plaintiffs' administrative remedies have not been exhausted and thus the case is not ripe for adjudication. Plaintiffs respond that many years would have to pass before the plaintiff children reached the age they could apply for admission under the quota system, and also that a similar period of years would have to pass before plaintiff fathers would be reached under the quota. Such delays, say plaintiffs, would deprive the children of paternal nurture, since in each case here the father has the basic responsibility for the child. Plaintiffs also allege that

the plaintiff fathers would not normally be admitted at all through the quota system as they lack the skills necessary for the labor certificate that must be obtained for entry through the quota system. Thus, plaintiffs assert that except in the most abstract sense their case is fully ripe. Plaintiffs' position is at least arguable.

VI. *RATIONALITY OF THE CLASSIFICATION*

The government's final argument is that the classification challenged by plaintiffs is neither arbitrary nor unreasonable. The government states that classification based on illegitimacy is not *per se* unconstitutional. *Labine* v. *Vincent*, 401 U.S. at 536, 91 S.Ct. at 1019 (1971).

The government further states that the classification may have resulted from a possible congressional concern with the problem of fraud attendant upon a determination of paternity between fathers and their illegitimate children. The government argues that a classification designed to prevent spurious claims has a rational basis. *Stanton* v. *Weinberger*, No. 73–1959, Slip Op. (10th Cir. Sept. 3, 1974). The point obviously has merit since parturition is normally more easily proven than insemination. But whether the discrimination need be as broad as that in the statute may require further inquiry.

In any event, there is at least some basis for plaintiffs' response that the law discriminates without e ther compelling or rational justification against unwed fathers and their natural children on the basis of sex and illegitimacy. *See*, in reference to rights to raise illegitimate children: *May* v. *Anderson*, 345 U.S. 528, 533, 73 S.Ct. 840, 843 (1953); *Skinner* v. *Oklahoma*, 316 U.S. 535, 541, 62 S.Ct. 1110, 1113 (1942); *Meyer* v. *Nebraska*, 262 U.S. 390, 399, 43 S.Ct. 625 (1923); in reference to rights of parents to custody and care of children: *Stanley* v. *Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 1212 (1972); *Griswold* v. *Connecticut*, 381 U.S. 479, 496, 85 S.Ct. 1678, 1688 (1965) (Goldberg, J. concurring); *Prince* v. *Massachusetts*, 321 U.S. 158, 166, 64 S.Ct. 438, 442 (1944); in reference to extension of parental rights to care for child to family not legitimated by marriage: *Weber* v. *Aetna Cas. and Surety Co.*, 406 U.S. 164, 169, 92

S.Ct. 1400, 1403 (1972); *Stanley* v. *Illinois*, 405 U.S. at 651, 92 S.Ct. at 1212 (1972); *Levy* v. *Louisiana*, 391 U.S. 68, 71, 88 S.Ct. 1509, 1511 (1968); in reference to discrimination based on legitimacy: *Jimenez* v. *Weinberger* , U.S. , 94 S.Ct. 2496 (1974); *New Jersey Welfare Rights Organization* v. *Cahill*, 416 U.S. 619, 93 S.Ct. 1700 (1973); *Gomez* v. *Perez*, 409 U.S. 535, 93 S.Ct. 872 (1973); *Weber* v. *Aetna Cas. and Surety Co.*, 406 U.S. 164, 92 S.Ct. 1400 (1972); *Glona* v. *Amer. Guaranty and Liability Ins.*, 391 U.S. 73, 88 S.Ct. 1515 (1968); *Levy* v. *Louisiana*, 391 U.S. 68, 88 S.Ct. 1509 (1968); *Skinner* v. *Oklahoma*, 316 U.S. 535, 62 S.Ct. 1110 (1942); *Griffin* v. *Richardson*, 346 F.Supp. 1226 (D. Md.), *aff'd*, 409 U.S. 1069, 93 S.Ct. 689 (1972); *Davis* v. *Richardson*, 342 F.Supp. 588 (D. Conn.), aff'd, 409 U.S. 1069, S.Ct. (1972); concerning discrimination on the basis of sex: *Taylor* v. *Louisiana*, U.S. , Sup.Ct. , L.Ed. 2d ; *Frontiero* v. *Richardson*, 411 U.S. 677, 93 S.Ct. 1764 (1973); *Reed* v. *Reed*, 404 U.S. 71, 92 S.Ct. 251 (1971).

Plaintiffs contend that the law establishes an unwarranted conclusive presumption of the absence of psychological and economic ties between unwed fathers and their illegitimate children. *See*, *Stanley* v. *Illinois*, 405 U.S. 645, 92 S.Ct. 1208 (1972) (concerning the presumption that all unwed fathers are neglectful parents); *Cleveland Board of Education* v. *La Fleur*, 414 U.S. 632, 644, 94 S.Ct. 791, 798 (1974) (" 'permanent irrebuttable presumptions have long been disfavored under the Due Process Clause of the Fifth and Fourteenth Amendments' ").

Plaintiffs' position, in view of the case law, is at least arguable.

VII. *CONCLUSION*

Under the standard established in *Goosby* v. *Osser*, 407 U.S. 512, 518, 93 S.Ct. 858-59 (1973), plaintiffs' case cannot be considered wholly insubstantial, obviously frivolous, and obviously without merit. Accordingly, a three-judge court must be convened. Plaintiffs' motion to certify the case as a

class action is deferred for consideration by the three-judge court.

SO ORDERED.

Dated: Brooklyn, New York
January 23, 1975.

/S/ JACK B. WEINSTEIN
U. S. D. J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DESIGNATION OF JUDGES

Having been notified by the Honorable Jack B. Weinstein, United States District Judge for the Eastern District of New York, that an application has been filed in the above matter for relief pursuant to Title 28 U.S.C. 2282 and 2284, I hereby designate the following judges, in addition to the Honorable Jack B. Weinstein, to hear and determine said cause as provided by law: Honorable Leonard P. Moore, United States Circuit Judge, United States Court of Appeals for the Second Circuit, and Honorable Henry Bramwell, United States District Court for the Eastern District of New York.

IT IS HEREBY ordered that this order be filed in the above matter in the United States District Court for the Eastern District of New York.

/S/
IRVING R. KAUFMAN
Chief Judge
United States Court of Appeals
Second Circuit

Dated: New York, New York
May 7, 1975

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NOTICE OF MOTION FOR CLASS ACTION CERTIFICATION, SUMMARY JUDGMENT AND PERMANENT INJUNCTION

S I R S :

PLEASE TAKE NOTICE, that upon the annexed affidavits, the plaintiffs' statement pursuant to General Rule 9 (g) of this Court, the attached exhibits, and all prior proceedings and papers herein, the undersigned will move this Three-Judge Court, before the Honorable Leonard P. Moore, the Honorable Jack B. Weinstein, and the Honorable Henry Bramwell, in Court No. 10 at the United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on September 4, 1975, at 2:30 p.m., or as soon thereafter as counsel can be heard,

1. for an order pursuant to Rule 23(c) (1) of the Federal Rules of Civil Procedure determining that this action is to be maintained as a class action pursuant to Rule 23(a) and Rule 23(b) (2) or, in the alternative, Rule 23(b) (1) (A) or (B) of the Federal Rules of Civil Procedure, the class to be defined as all United States citizen natural fathers and their alien children born out of wedlock and not legitimated who are excluded from the definition of "parent" and "child" under INA §§101 (b) (1) and (2) (8 U.S.C. §§1101 (b) (1) and (2)) and thereby denied classification of the child as an "immediate relative" exempt from numerical quotas pursuant to INA §§201 (a) and (b) (8 U.S.C. §§1151 (a) and (b)) and all United States citizen and permanent resident children born out of wedlock and not legitimated and their alien natural fathers who are excluded from the definition of "parent" and "child" under INA §§101 (b) (1) and (2) (8 U.S.C. §§1101 (b) (1) and (2)) and thereby denied exemption of the father from a "labor certification" requirement pursuant to INA §212 (a) (14) (8 U.S.C. §§1182 (a) (14));

2. for an order pursuant to Rule 56 of the Federal Rules of Civil Procedure and 28 U.S.C. §2201 granting summary judgement in favor of the plaintiffs and class members declaring the definitions of "parent" and "child" in Sections 101 (b) (1) and (2) of the Immigration and Nationality Act (8 U.S.C. §§1101 (b) (1) and (2)) unconstitutional on their face and as applied to plaintiffs and plaintiff class members, as violative of the Due Process Clause of the Fifth Amendment to the United States Constitution, on the grounds

that the plaintiffs are entitled to a judgment as a matter of law; and

3. for an order pursuant to Rule 65 of the Federal Rules of Civil Procedure and 28 U.S.C. §§2202 and 2282 granting a permanent injunction permanently enjoining and restraining the defendants, and their officers, agents, servants, employees and successors in office from enforcing, applying or relying on the definitions of "parent" and "child" under INA §§101 (b) (1) and (2) (8 U.S.C. §§1101 (b) (1) and (2)) to deny "immediate relative" status pursuant to INA §§201 (a) and (b) (8 U.S.C. §§1151 (a) and (b) or exemption from the "labor certification" requirement pursuant to INA §212 (a) (14) (8 U.S.C. §1182 (a) (14) to the plaintiffs and plaintiff class members, and from failing to afford the plaintiffs whatever immigrant status they would have had but for the unconstitutional application of the challenged provisions; and granting such other and further relief as to this Court may seem just and proper.

Dated: New York, New York
August 7, 1975

Yours, etc.

KALMAN FINKEL
ATTORNEY-IN-CHARGE
THE LEGAL AID SOCIETY
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/S/

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PLAINTIFFS' STATEMENT UNDER GENERAL RULE 9 (g) OF THE MATERIAL FACTS AS TO WHICH THERE EXIST NO GENUINE ISSUES TO BE TRIED

1. The definitions of "parent" and "child" in the Immigration and Nationality Act, INA §1101 (b) (1) and (2), are applied to determine whether an alien is entitled as a "parent" or a "child" to classification as an "immediate relative" under INA §1151 or exemption from the "labor certification" requirement under INA §1182 (a) (14). A child born out of wedlock and not legitimated is not the "child" of his natural father within the meaning of this statutory section.

A natural father of a child born out of wedlock and not legitimated is not a "parent" within the meaning of this statutory section.

2. The members of the asserted class are so numerous that joinder of all members is impracticable. (Exhibit L).

3. In connection with the claims of the Plaintiffs Ramon Martin Fiallo and Ramon Augusto Rafael Fiallo-Sone, it is asserted that:

a. Ramon Martin Fiallo, an infant citizen of the United States, was born in New York, New York on January 2, 1971.

b. Ramon Fiallo-Sone is the natural father of Ramon Martin Fiallo and his name appears on Ramon Martin Fiallo's birth certificate (Exhibit A).

c. Celia Francisca Michel Rodriguez, the natural mother of Ramon Martin Fiallo, recognizes Ramon Fiallo-Sone as the father of her child.

d. Ramon Fiallo-Sone and Celia Francisca Michel Rodriguez have never been married.

e. Ramon Fiallo-Sone entered the United States in December of 1964 as a visitor and was given permission to depart from the United States voluntarily.

f. Since shortly after his son's birth, Ramon Fiallo-Sone has been the primary caretaker and constant companion to his son. The son is a pre-school age child and is very dependent upon and attached to his father. Celia Francisca Michel Rodriguez assumed and continued the role of bread-winner. She believes that it is in the best interests of the child to live with his father in the United States.

g. The Fiallos cannot achieve the "parent-child" status by legitimation or adoption of the son by the father. Legitimation is not possible because of the unwillingness of the father and mother to marry each other, and the refusal of the mother to consent precludes adoption.

h. The effect of the application of the challenged status to the plaintiffs Fiallos is to require as a prerequisite for his lawful admission to this country that Mr. Fiallo obtain a labor certification, which he has sought and failed to secure in the past, and thereby to deny a United States citizen

child the companionship and care of his father in this country.

4. The proper preliminary step for obtaining an immigrant visa and permanent resident status for a Western Hemisphere father of a United States citizen child under twenty-one is to file a Form FS 497A. A Form FS 497A, "Preliminary Questionnaire to Determine Immigrant Status," was submitted on behalf of Ramon Fiallo-Sone to the United States Consulate in the Dominican Republic. Consul Catherine M. Hurley rejected and returned the Form FS 497A and wrote a letter stating that Mr. Fiallo must have a "labor certification" before he could be registered for immigration. (Exhibit B). She further stated that the Fiallos could not benefit from exemption from the labor certification requirement on the basis of their father-son relationship because Ramon Martin Fiallo was not legitimate or legitimated. By Consul Hurley's action the Fiallos are denied the benefit of registering for immigration, being given a priority date for an immigrant visa, and being allowed to apply for a visa without a labor certification. See 22 C.F.R. §§42.61, 42.62, 42.63. The date stamped on the returned Form FS 497A indicated that the form had been received in the U.S. Embassy at Santo Domingo, Dominican Republic on January 25, 1974. (Exhibit C).

5. In connection with the claims of Plaintiffs Trevor Aston Wilson, Earl Antonio Wilson and Arthur Cecil Wilson, it is asserted that:

a. Trevor and Earl Wilson are permanent residents of the United States, A 17 564 218 and A 17 564 217, respectively.

b. Trevor and Earl Wilson were born on June 19, 1957 and January 6, 1959, respectively (Exhibits F and G) to Arthur Cecil Wilson, and Leonie (Leony) (Muckle) Moses.

c. Arthur Cecil Wilson and Leonie (Leony) (Muckle) Moses have never married.

d. Trevor and Earl Wilson, and their maternal aunt, Lena Hudson, recognize Arthur Cecil Wilson as their father and Arthur Wilson acknowledges the paternity of Trevor and Earl Wilson.

e. From the time of their births until 1968, Trevor and

Earl Wilson lived with and were maintained by their natural father, Arthur Wilson. Subsequent to 1968, Trevor and Earl Wilson have maintained a relationship with their father by visits and letters and Arthur Wilson has contributed to their support.

f. On September 15, 1974, Leonie (Leony) (Muckle) Moses died in New York City, New York. (Exhibit H). Upon the death of their mother, Trevor and Earl Wilson requested that their father come to the United States. Arthur Wilson obtained an emergency visa and entered the United States to be with his sons.

g. Arthur Cecil Wilson left the United States when the extensions he was able to obtain on his visa expired. He returned to Jamaica because without permanent resident status he could not obtain a job in the United States and he felt that in Jamaica he could work and contribute something to the support of his children. He also did not want to violate the law by overstaying the time period allowed.

h. Trevor and Earl Wilson desire to stay in the United States, continue their education and eventually become citizens, but they desire and need their father to live with and maintain them in the United States. Their maternal aunt, Lena Hudson, believes this would be in their best interests. The Wilson children want their father to return to the United States as a permanent resident so that they can live together as a family here.

i. Mr. Wilson cannot legitimate his children by marriage to their mother, who is dead. Neither can they become his adopted children within the meaning of immigration law because they both are over fourteen years of age. INA §101 (b) (1) (E) (8 U.S.C. §1101 (b) (1) (E)).

j. Without an approved I–550, Arthur Cecil Wilson cannot obtain from the consul a priority date for an immigrant visa without the necessity of obtaining a labor certification. 22 C.F.R. §§42.61, 42.62.

k. The I–550 petition filed by Trevor Aston Wilson must be denied by reason of the application of the challenged statutes, since Trevor and his brother Earl are not legitimate or legitimated issue of their father Arthur Wilson.

l. The effect of the application of the challenged statutes

to the plaintiffs Wilsons is to subject Mr. Wilson to the labor certification requirement, which will realistically be impossible for Mr. Wilson to meet, since the sole job for which he is qualified—general handy man—is one for which a labor certification will never be furnished. See 29 C.F.R. 60.7 (Schedule B).

6. The proper preliminary procedure for a permanent resident under twenty-one to obtain an immigrant visa and permanent resident status for his father is to file a Form I–550. Plaintiff Trevor Aston Wilson submitted a Form I–550 to the Immigration and Naturalization Service.

7. In connection with the claims of the Plaintiffs Serge Patrick Warner and Cleophus Rupert Warner, it is asserted that:

a. Serge Patrick Warner is the son of Cleophus Rupert Warner, a naturalized citizen of the United States (Certificate Number 8941869), and was born on February 23, 1960, in the Commune De Saint-Martin, Departement de la Guadeloupe, St. Martin, French West Indies.

b. Cleophus Warner has never been married to Serge Patrick Warner's natural mother, Elenore Carmelie Gibs.

c. Shortly after the birth of his son, Cleophus Warner registered as his father and acknowledged paternity and his name therefore appears on the birth certificate. (Exhibit D).

d. Mr. Warner has supported and maintained his son from his birth until the present time and intends to continue to do so in the future.

e. Serge Patrick Warner entered the United States as a visitor on August 22, 1969, solely with the intention of visiting his father, Cleophus Rupert Warner. Shortly after his entry, his mother married and informed Cleophus Rupert Warner that she was moving to a new address and requested him to keep their son, Serge Warner.

f. Serge Warner, who is now paroled into this country pending exclusion proceedings, continues to reside with his father, in the Borough of Queens, City and State of New York, and his father continues to support and maintain him.

Serge Warner desires to become a permanent resident and to remain in the United States with his father.

g. Mr. Warner cannot legitimate his son by marriage to the mother because she has married another man.

h. Mr. Warner cannot obtain the status of "parent" of his son by adopting him, since under the immigration law, INA §101 (b) (1) (e) (8 U.S.C. §1101 (b) (1) (E)), the adoption must occur before the child is fourteen and Serge Warner is beyond that age.

i. When Mr. Warner attempted to regularize Serge Warner's status by writing to the United States Consul in the French West Indies, he was informed that he must obtain an approved I-130 Petition before the consul would take any action.

j. The effect of the application of the challenged provisions is to deny Mr. Warner, a United States citizen, the care, companionship, custody and maintenance of his child in the United States. Serge Warner will be forced to return to a country where there is no one to care for him.

8. The proper preliminary step for obtaining an immigrant visa and permanent resident status for the child of a United States citizen is to file a Form I-130. Cleophus Rupert Warner filed a Form I-130, "Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa," with the Immigration and Naturalization Service in New York City. The petition was rejected on March 2, 1972 on the grounds that it was mandatorily deniable under INA §101 (b) because Serge Patrick Warner was not the legitimate or legitimated issue of Cleophus Warner. (Exhibit E).

Dated: New York, New York
August 7, 1975

Respectfully Submitted,

KALMAN FINKEL
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

(Title omitted in printing)

AFFIDAVIT OF RAMON AUGUSTO RAFAEL FIALLO-SONE

STATE OF NEW YORK)
: SS.:
COUNTY OF QUEENS)

RAMON AUGUSTO RAFAEL FIALLO-SONE, being duly sworn, deposes and says:

1. I am the natural father of RAMON MARTIN FIALLO, an infant citizen of the United States born in New York, New York, on January 2, 1971.

2. My name appears as father on Ramon Martin Fiallo's Birth Certificate.

3. CELIA FRANCISCA MICHEL RODRIGUEZ is the natural mother of my son, Ramon Martin Fiallo.

4. I am not married to Celia Francisca Michel Rodriquez.

5. Shortly after Ramon Martin Fiallo's birth, I assumed the role of primary caretaker and constant companion to him and I continue that role to date.

6. Celia Francisca Michel Rodriguez assumed and continues to date the role of breadwinner.

7. I want to raise my son in the United States so he may obtain the full benefits of his citizenship.

8. I am a citizen of the Dominican Republic.

9. I entered the United States in December, 1964, as a visitor and was given permission to depart from the United States voluntarily.

10. A Form FS 497A, 'Preliminary Questionnaire To Determine Immigrant Status' was submitted on my behalf to the United States Consulate in the Dominican Republic, the proper preliminary step for obtaining an immigrant visa and permanent resident status for a Western Hemisphere father of a United States Citizen child under twenty-one.

11. Consul Catherine M. Hurley returned the Form FS 497A and wrote a letter stating that I was not eligible for an immigrant visa and permanent resident status on the basis of my relationship to my citizen son because my son is not my legitimate issue.

12. The stamp on the returned Form FS 497A indicated that the Form had been received by the United States Embassy at Santo Domingo, Dominican Republic, on January 25, 1974.

13. I reside with my son Ramon Martin Fiallo in Brooklyn, New York.

WHEREFORE, I respectfully request that the Court grant plaintiff's motion for an Order allowing the joinder of certain proposed defendants, for an Order determining this action to be maintainable as a class action; and for an order convening a three-judge court.

/S/
RAMON AUGUSTO RAFAEL FIALLO-SONE

SWORN TO BEFORE ME THIS
20 DAY OF NOVEMBER, 1974.

(Jurat omitted in printing)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

(Title omitted in printing)

AFFIDAVIT OF
CELIA FRANCISCA MICHEL RODRIQUEZ

STATE OF NEW YORK)
: SS.:
COUNTY OF QUEENS)

CELIA FRANCISCA MICHEL RODRIQUEZ, being duly sworn, deposes and says:

1. I am a legal permanent resident of the United States.

2. I am the natural mother of Ramon Martin Fiallo, an infant citizen of the United States, born on January 2, 1971, in New York, New York.

3. Ramon Augusto Rafael Fiallo-Sone is the natural father of Ramon Martin Fiallo.

4. I am not married to Ramon Augusto Rafael Fiallo-Sone.

5. Shortly after Ramon Martin Fiallo's birth, his father, Ramon Augusto Rafael Fiallo-Sone, assumed the role of primary caretaker and constant companion to Ramon Martin Fiallo and continues that role to date.

6. I assumed and continue to date the role of breadwinner.

7. I want my son to be raised in the United States so he may obtain the full benefits of his citizenship.

8. Because my son is very dependent upon his father, Ramon Augusto Rafael Fiallo-Sone, I believe that it is in his best interest if Ramon Augusto Rafael Fiallo-Sone is allowed to become a permanent resident so he may live with Ramon Martin Fiallo in the United States.

9. I bring this action in my son's behalf as his natural guardian.

WHEREFORE, I respectfully request that the Court grant plaintiff's motion for an Order allowing the joinder of

certain proposed defendants; for an Order determining this action to be maintainable as a class action; and for an Order convening a three-judge court.

/S/
CELIA FRANCISCA MICHEL RODRIGUEZ

SWORN TO BEFORE ME THIS
20 DAY OF NOVEMBER, 1974.

(Jurat omitted in printing)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

(Title omitted in printing)

AFFIDAVIT OF CLEOPHUS RUPERT WARNER

STATE OF NEW YORK)
: SS.:
COUNTY OF QUEENS)

CLEOPHUS RUPERT WARNER, being duly sworn, deposes and says:

1. I am a naturalized citizen of the United States of America, having been naturalized in the District Court of the United States for the Eastern District of New York, on April 26, 1966, under Certificate Number 8941869.

2. Serge Patrick Warner is my natural son and was born on February 23, 1960, in the Commune De Saint-Martin, Departement de la Guadeloupe, St. Martin, French West Indies.

3. I never married Serge Patrick Warner's natural mother, Elenore Carmelie Gibs.

4. Shortly after the birth of Serge Patrick Warner, I registered as his father and acknowledged paternity and my name therefore appears on the Birth Certificate of Serge Patrick Warner.

5. I have supported and maintained Serge Patrick Warner from his birth until the present time and intend to continue to do so in the future.

6. Serge Patrick Warner entered the United States as a visitor on August 22, 1969, solely with the intention of visiting me.

7. Shortly after Serge Patrick Warner's entry into the United States, his mother, Elenore Carmelie Gibs informed me by letter that she had married another man, and moved to a new address, and she requested that I keep my son, Serge Patrick Warner.

8. I filed a Form I-130, 'Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa', with the Immigration and Naturalization Service, New York City, New York, the proper preliminary step for obtaining an immigrant visa and permanent resident status for an under twenty-one unmarried child of a United States citizen.

9. The petition was rejected on March 2, 1972 on the grounds that it was mandatorily deniable under INA §101(b) because Serge Patrick Warner was not the legitimate or legitimated issue of Cleophus Warner.

10. I also attempted to regularize Serge Patrick Warner's status by writing to the U.S. Consul in the French West Indies. In response, I was informed that I must obtain an approved I-130 Petition before the Consul would take any action.

11. Serge Patrick Warner is now paroled into the United States pending exclusion proceedings.

12. Serge Patrick Warner continues to reside with me.

13. I continue to support and maintain him.

WHEREFORE, I respectfully request that this Court grant the motion for an Order permitting CLEOPHUS RUPERT WARNER and SERGE PATRICK WARNER to intervene as Plaintiffs in the above entitled action on the ground that there are common questions of law and fact and that intervention will not unduly delay or prejudice the adjudication of the rights of the original parties; for an Order allowing the joinder of certain proposed defendants; for an Order determining this action to be maintainable as a class action; and for an Order convening a three-judge court.

/S/
CLEOPHUS RUPERT WARNER

SWORN TO BEFORE ME THIS
19th DAY OF NOVEMBER, 1974.

(Jurat omitted in printing)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

(Title omitted in printing)

AFFIDAVIT OF SERGE PATRICK WARNER

STATE OF NEW YORK)
: SS.:
COUNTY OF QUEENS)

SERGE PATRICK WARNER, being duly sworn, deposes and says:

1. I am a citizen of the French West Indies.

2. I have lived with my father, Cleophus Rupert Warner, since 1969.

3. I desire to obtain permanent resident status and remain in the United States with my father.

WHEREFORE, I respectfully request that this Court grant the motion for an Order permitting CLEOPHUS RUPERT WARNER and SERGE PATRICK WARNER to intervene as Plaintiffs in the above entitled action on the ground that there are common questions of law and fact and that intervention will not unduly delay or prejudice the adjudication of the rights of the original parties; for an Order allowing the joinder of certain proposed defendants; for an

Order determining this action to be maintainable as a class action; and for an Order convening a three-judge court.

/S/
SERGE PATRICK WARNER

SWORN TO BEFORE ME THIS
22nd DAY OF NOVEMBER, 1974.

(Jurat omitted in printing)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

(Title omitted in Printing)

AFFIDAVIT OF TREVOR ASTON WILSON

STATE OF NEW YORK)
: SS.:
COUNTY OF BRONX)

TREVOR ASTON WILSON, being duly sworn, deposes and says:

1. I am a permanent resident of the United States, No. A 17 564 218.

2. I was born on January 19, 1957, in Jamaica.

3. I recognize Arthur Cecil Wilson as my natural father.

4. My mother, Leonie Muckle Moses, was never married to Arthur Cecil Wilson.

5. From my birth until 1968 when I came to the United States, I lived with my father, Arthur Cecil Wilson.

6. Subsequent to 1968 I maintained a relationship with my father by visits and letters and my father contributed to my support.

7. On September 15, 1974, my mother, Leonie Muckle Moses, died in New York City, New York.

8. Upon my mother's death, I and my brother, Earl An-

tonio Wilson, wired our father, Arthur Cecil Wilson, requesting that he come to the United States.

9. Arthur Cecil Wilson obtained an emergency visa and entered the United States.

10. Arthur Cecil Wilson left the United States when the extensions he was able to obtain on his visa expired.

11. He returned to Jamaica because without permanent resident status he could not obtain a job in the United States and he felt that in Jamaica he could work and contribute something to the support of my brother and I. He also did not want to violate the law by overstaying the time period allowed.

12. I intend to continue my education, live in and become a citizen of the United States.

13. I want and need my father, Arthur Cecil Wilson, to live with and maintain me in the United States.

14. As the older child, I submitted a Form I-550 to the Immigration and Naturalization Service in New York City, New York, the proper preliminary procedure for obtaining an immigrant visa and permanent resident status for a parent of a United States permanent resident child unmarried and under twenty-one years.

WHEREFORE, I respectfully request that this Court grant the motion for an Order permitting TREVOR ASTON WILSON and EARL ANTONIO WILSON by their next friend, LENA HUDSON, and ARTHUR CECIL WILSON, to intervene as plaintiffs in the above entitled action on the ground that there are common questions of law and fact and that intervention will not unduly delay or prejudice the adjudication of the rights of the original parties; for an Order allowing the joinder of certain proposed defendants; for an Order determining this action to be maintainable as a class action; and for an Order convening a three-judge court.

/S/
TREVOR ASTON WILSON

SWORN TO BEFORE ME THIS
19 DAY OF NOVEMBER, 1974.

(Jurat omitted in printing)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

(Title omitted in printing)

AFFIDAVIT OF EARL ANTONIO WILSON

STATE OF NEW JERSEY)
: SS.:
COUNTY OF MERCER)

EARL ANTONIO WILSON, being duly sworn, deposes and says:

1. I am a permanent resident of the United States, No. A 17 564 217.

2. I was born in Jamaica on January 6, 1959.

3. I recognize Arthur Cecil Wilson as my natural father.

4. My mother, Leonie Muckle Moses, was never married to Arthur Cecil Wilson.

5. From my birth until 1968 when I came to the United States, I lived with my father, Arthur Cecil Wilson.

6. Subsequent to 1968 I maintained a relationship with my father by visits and letters and my father contributed to my support.

7. On September 15, 1974, my mother, Leonie Muckle Moses, died in New York City, New York.

8. Upon my mother's death, I and my brother, Trevor Aston Wilson, wired our father, Arthur Cecil Wilson, requesting that he come to the United States.

9. Arthur Cecil Wilson obtained an emergency visa and entered the United States.

10. Arthur Cecil Wilson left the United States when the extensions he was able to obtain on his visa expired.

11. He returned to Jamaica because without permanent resident status he could not obtain a job in the United States and he felt that in Jamaica he could work and contribute something to the support of my brother and I. He also did not want to violate the law by overstaying the time period allowed.

12. I intend to continue my education, live in and become a citizen of the United States.

13. I want and need my father, Arthur Cecil Wilson, to live with and maintain me in the United States.

WHEREFORE, I respectfully request that this Court grant the motion for an Order permitting TREVOR ASTON WILSON and EARL ANTONIO WILSON by their next friend, LENA HUDSON, and ARTHUR CECIL WILSON, to intervene as Plaintiffs in the above entitled action on the ground that there are common questions of law and fact and that intervention will not unduly or prejudice the adjudication of the rights of the original parties; for an Order allowing the joinder of certain proposed defendants; for an Order determining this action to be maintainable as a class action; and for an Order convening a three-judge court.

/S/
EARL ANTONIO WILSON

SWORN TO BEFORE ME THIS
20th DAY OF NOVEMBER, 1974.

(Jurat omitted in printing)

AFFIDAVIT OF ARTHUR CECIL WILSON

STATE OF NEW YORK)
: S.:
COUNTY OF BRONX)

ARTHUR CECIL WILSON, being duly sworn, deposes and says:

1. That I am a citizen of Jamaica.

2. That I am the father of Trevor Aston Wilson born on June 19, 1957, and of Earl Antonio Wilson born on January 6, 1959.

3. That Leonie (Leony) Moses (Muckle) is the mother of the children in paragraph "2" above.

4. That I lived with and supported Earl and Trevor Wilson until 1968, and have maintained a relationship with them thereafter until date.

5. That Leonie Moses (Muckle) died on September 15, 1974, in New York, New York.

6. Upon the request of my children, I obtained an emergency visa and came to the United States.

7. Because I believe my children are in need of my psychological and financial support, I desire to obtain a permanent residency in the United States so that I may live with and assist them.

8. I understand that under the present immigration law, I may not do so because I was not married to Leonie Moses (Muckle), the mother of the children.

9. I believe this situation denies me my rights under the First, Fifth and Ninth Amendments to the United States Constitution, and therefore I desire to join an action now pending in the United States District Court for the Eastern District of New York, Civil action No. 74C1083.

/S/
ARTHUR CECIL WILSON

SWORN TO BEFORE ME THIS
24 DAY OF OCTOBER, 1974.

(Jurat omitted in printing)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

(Title omitted in printing)

AFFIDAVIT OF LENA HUDSON

STATE OF NEW YORK)
: SS.:
COUNTY OF BRONX)

LENA HUDSON, being duly sworn, deposes and says:

1. I am the maternal aunto of Trevor Aston Wilson and Earl Antonio Wilson.

2. I recognize Arthur Cecil Wilson as the natural father of Trevor Aston Wilson and Earl Antonio Wilson.

3. I believe it would be in the best interest of my nephews if their father, Arthur Cecil Wilson, lived with and maintained them.

4. As the next friend of my nephews, I bring this action in their behalf.

WHEREFORE, I respectfully request that this Court grant the motion for an Order permitting TREVOR ASTON WILSON and EARL ANTONIO WILSON, by their next friend, LENA HUDSON, and ARTHUR CECIL WILSON, to intervene as Plaintiffs in the above entitled action on the ground that there are common questions of law and fact and that intervention will not unduly delay or prejudice the adjudication of the rights of the original parties, for an Order allowing the joinder of certain proposed defendants; for an Order determining this action to be maintainable as a class action, and for an Order convening a three-judge court.

/S/
LENA HUDSON

SWORN TO BEFORE ME THIS
18th DAY OF NOVEMBER, 1974.

(Jurat omitted in printing)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

(Title omitted in printing)

STIPULATION

IT IS HEREBY STIPULATED and AGREED by and among the parties hereto by their respective attorneys that if class action is otherwise appropriate, the class is so numerous that joinder of all members is impracticable.

DATED: NEW YORK, NEW YORK
February 21, 1975

MORTON B. DICKER, ESQ.
THE LEGAL AID SOCIETY
11 Park Place
NY NY 10007
Attorneys for Plaintiffs

BY:
/S/
JANET M. CALVO, ESQ.

DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK
Attorneys for Defendants

BY:
/S/
DOUGLAS J. KRAMER
Assistant U.S. Attorney

(EXHIBIT L)

EMBASSY OF THE
UNITED STATES OF AMERICA
Consular Section
Santo Domingo, Dominican Republic

February 22, 1974

The Legal Aid Society
Park Place Office
Eleven Park Place, New York, N. Y. 10007

Re: Ramon Augusto Fiallo

Dear Sir : Attn: Janet Calvo

The receipt is acknowledge of your recent letter which is returned herewith for your ready reference.

The Immigration and Nationality Act requires that a prospective immigrant born in the Western Hemisphere have a labor certification to be registered for immigration. The spouse, parent or minor child of an American citizen or of a legal resident alien of the United States is exempt from this requirement.

It is assumed from your letter that Mr. Fiallo and the mother of Ramon Martin were never married. It would appear therefore that the only way in which Mr. Fiallo could benefit under the immigration laws of his relationship to the child would be if the child were legitimated under the laws of the child's residence. If legitimation takes place, evidence to that affect should be submitted with Form FS-497 and birth certificate so that Mr. Fiallo may be registered on the waiting list.

Under Dominican law a child may be legitimated only by the marriage of his parents. Recognition of paternity does not serve this purpose. As Mr. Fiallo's case now stands, he needs a labor certification based on an offer of employment approved by the Department of Labor unless he can bring his case within the exception provided for the parent of an American citizen through the legitimation of his son prior to his 18th birthday.

Very truly yours,
/s/ C. M. Hurley
Catherine M. Hurley:cas
Consul of the United States of America

(We are not keeping any record of this correspondence. Should you write again, please return this letter and the attachment hereto.)

SDO
C-1 10/69

(EXHIBIT B)

DEPARTMENT OF STATE
PRELIMINARY QUESTIONNAIRE TO DETERMINE IMMIGRANT STATUS

TO: THE UNITED STATES CONSUL AT SANTO DOMINGO, DOMINICAN REPUBLIC

DO NOT WRITE IN THIS SPACE
Instructions for _____
Sent _____

INSTRUCTIONS
If a careful reading of Form DSL-852A indicates that you should file this form, please complete it and forward it to the designated consular office. This form must be completed in English and typed or printed in legible block letters. When this form is returned to you, please retain it as it must be attached to any future correspondence addressed to the consular office.

1. NAME (Last name)	(First name)	(Middle names)
Fiallo	Ramon	Augusto Rapheal

2. OTHER NAMES, ALIASES (If married woman, give maiden name and surnames of any previous spouses)
Fiallo-Sone (family name)

3. PRESENT ADDRESS (House number, street, city, state and ZIP code)
385 Weirfield Street, Brooklyn, New York 11227

4. PLACE OF BIRTH (City, state or province, country)	5. DATE OF BIRTH (Month, Day, Year)
San Pedro de Maeoris, Dominican Republic	Sept. 26, 1923

6. MARITAL STATUS ☐ Single ☐ Married ☐ Widowed ☒ Divorced

7. SEX	8. DISTINGUISHING MARKS OF IDENTIFICATION	9. Passport No. / Issued by / Issue date
☒ Male ☐ Female		

10. NAME AND BIRTHPLACE OF FATHER	11. MAIDEN NAME AND BIRTHPLACE OF MOTHER
Miguel Fiallo, Dominican Republic	Narcisa Sone, Dominican Republic

12. NAME OF SPOUSE (Maiden or family name) (First name) (Middle name)

13. SPOUSE'S BIRTHPLACE (City, State or province, Country)	14. SPOUSE'S BIRTHDATE (Month, Day, Year)	15. WILL SPOUSE IMMIGRATE WITH YOU? ☐ Yes ☐ No

16. NAME AND BIRTHPLACE OF SPOUSE'S FATHER	17. NAME AND BIRTHPLACE OF SPOUSE'S MOTHER

18. IF YOU HAVE A SPOUSE, PARENT OR CHILD WHO IS A UNITED STATES CITIZEN OR ALIEN RESIDENT, PLEASE COMPLETE THE FOLLOWING:

NAME	RELATIONSHIP	STATUS IN U. S.	PRESENT ADDRESS
Ramon Martin Fiallo	Son	Citizen	385 Weirfield Street, Brooklyn, New York

19. IF YOU HAVE ANY RELATIVES IN THE UNITED STATES OTHER THAN THOSE IDENTIFIED ABOVE, COMPLETE THE FOLLOWING:

NAME	RELATIONSHIP	STATUS IN U. S.	PRESENT ADDRESS

20. YOUR PRESENT STATUS IN THE UNITED STATES
☐ Parolee ☐ Other (specify) Visitor
☐ Indefinite voluntary departure status Alien registration number _____

21. NATIONALITY (Including former, if any)	22. PRESENT OCCUPATION OR VOCATION
DOMINICAN REPUBLIC	Draftsman

FORM FS-497A 8-69

JAN 25 PM 74

(Note: Please Print date Stamp Jan 25 PM 74)

(EXHIBIT C)

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
NEW YORK, NEW YORK

REFER TO THIS FILE NO.
AID 405 331

Mr. Cleothus T. Warner
34-34 111th Street
Corona, New York

Date: MAR 4 1972

DECISION

Upon consideration, it is ordered that your visa petition submitted in behalf of Sergo Patrick Warner be denied for the following reasons:

Section 101 (b) of the Immigration and Nationality Act, as amended provides that the relationship of a child through a father must be as a result of a valid marriage and the child must be legitimate or have been legitimated.

In the absence of any evidence that you have ever been married to the boy's mother or that he has ever been legitimated, your petition is mandatorily deniable.

If you desire to appeal this decision, you may do so. Your notice of appeal must be filed within 15 days from the date of this notice. If no appeal is filed within the time allowed, this decision is final. Appeal in your case may be made to:

XXXX Board of Immigration Appeals in Washington, D. C., on the enclosed Forms I-290 A.

☐ Regional Commissioner on the enclosed Form I-290 B.

If an appeal is desired, the Notice of Appeal shall be executed and filed with this office, together with a fee of $25. A brief or other written statement in support of your appeal may be submitted with the Notice of Appeal.

Any question which you may have will be answered by the local immigration office nearest your residence, or at the address shown in the heading to this letter.

Sincerely yours,

Enclosure(s)

District Director

(EXHIBIT E)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

(Title omitted in printing)

NOTICE OF MOTION TO DISMISS

S I R S :

PLEASE TAKE NOTICE that upon all the papers and proceedings heretofore had herein, the defendants will move this Statutory Court, before the Honorable Leonard P. Moore, the Honorable Jack B. Weinstein, and the Honorable Henry Bramwell, in Courtroom No. 10 at the Federal Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on the 4th day of September, 1975 at 2:00 p.m. in the afternoon of that day for an order, pursuant to Rules 12(b) (1) and (6) of the Federal Rules of Civil Procedure dismissing this action and for such other and different relief as to the court seems just and proper.

Dated: Brooklyn, New York
August 15, 1975

Yours, etc.,

DAVID G. TRAGER
United States Attorney
Eastern District of New York
Attorney for Defendants
225 Cadman Plaza East
Brooklyn, New York 11201
By:
/S/
DOUGLAS J. KRAMER
Assistant U.S. Attorney

To: Kalman Finkel, Esq.
Attorney-in-Charge
Legal Aid Society

Janet M. Calvo

John E. Kirklin

Anita Fisher Barrett

Of Counsel

Attorneys for the Plaintiffs
11 Park Place
New York, New York 10011

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

RAMON MARTIN FIALLO, An infant by his Mother, CELIA FRANCISCA MICHAEL RODRIGUEZ, and RAMON AUGUSTO RAFAEL FIALLO-SONE; CLEOPHUS RUPERT WARNER and SERGE PATRICK WARNER, An infant by his father, CLEOPHUS RUPERT WARNER; TREVOR ASTON WILSON and EARL ANTONIO WILSON, Infants by their aunt and next friend LENA HUDSON, and ARTHUR CECIL WILSON, on behalf of themselves and all other persons similarly situated,

PLAINTIFFS,

—against—

EDWARD H. LEVI, individually and as Attorney General of the United States; LEONARD E. CHAPMAN, JR., individually and as Commissioner of the Immigration and Naturalization Service; MAURICE KILEY, individually and as District Director of the Immigration and Naturalization Service for New York City; HENRY KISSINGER, individually and as Secretary of State of the United States; LEONARD WALENTYNOWICZ, individually and as Administrator of the Bureau of Security and Consular Affairs, Department of State; JULIO ARIAS, individually and Director of Visa Office, Bureau of Security and Consular Affairs, Department of State; CATHERINE M. HURLEY, individually and as Consul of the United States of America, Santo Domingo, Dominican Republic,

Defendants.

:74 C 1083

OPINION AND ORDER

APPEARANCES: JANET CALVO, ESQ., New York, N.Y. (Kalman Finkle, Morton B. Dicker, John E. Kirklin, Anita Fisher Barett, Esqs., The Legal Aid Society) *for Plaintiffs.*

DOUGLAS J. KRAMER, Esq., Assistant U.S. Attorney, Brooklyn, New York (David G. Trager, United States Attorney, Eastern District of New York) *for Defendants.*

BEFORE: MOORE, Circuit Judge, WEINSTEIN and BRAMWELL, District Judges.

MOORE, Circuit Judge:

This is an action challenging the constitutionality of two classifications of aliens established by Congress as part of a comprehensive scheme for the admission of aliens into the United States contained in the Immigration and Nationality Act (the "Act"), Title 8 U.S.C. §1101 *et seq.* Plaintiffs specifically challenge the Act's definition of "parent" and "child" insofar as it excludes the relationship between unwed, biological fathers and their illegitimate children.[1] The effect of the exclusion is to subject the aliens in question to restrictive numerical quotas and labor certification require-

[1] The relevant section is 1101(b) (1) (2), which reads:

(1) The term "child" means an unmarried person under twenty-one years of age who is—

(A) a legitimate child; or

(B) a stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred; or

(C) a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in or outside the United States, if such legitimation takes place before the child reaches the age of eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation.

(D) an illegitimate child, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother;

(E) a child adopted while under the age of fourteen years if the child has thereafter been in the legal custody of, and has resided with, the adopting parent or parents for at least two years: *Provided*, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter.

(F) a child, under the age of fourteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 1151(b) of this title, who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care which will be provided the child if admitted to the United States and who has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by a United States citizen and his spouse who personally saw and observed the child prior to or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse who have complied with the preadoption requirements, if any, of the child's proposed residence: *Provided*, That no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter.

(2) The terms "parent", "father", or "mother" mean a parent, father, or mother only where the relationship exists by reason of any of the circumstances set forth in subdivision (1) of this subsection.

[2] 8 U.S.C. §1151(b), 8 U.S.C. §1182(a) (14).

ments which are waived for individuals who qualify as parents or children, within the meaning of the Act, of American citizens and permanent residents.[2] Plaintiffs are three sets of unwed, biological fathers and their illegitimate offspring. Both the aliens excluded by this section of the Act and the American citizens or permanent residents who are these aliens' illegitimate children or biological fathers have joined as plaintiffs in this suit; their claim is that the statutory classification is unconstitutional on its face since unwed biological fathers are excluded while unwed biological mothers are not.

A three-judge court was ordered convened, and plaintiffs have moved this Court for certification as a class action, summary judgment, and a permanent injunction. For the reasons which follow, those motions are denied, and judgment is entered for the defendant. The facts are not in dispute, and may be summarized briefly.

Ramon Fiallo, an infant and an American citizen by birth, applied—through application submitted on his behalf by his mother—to the United States Consul in the Dominican Republic to have his alien father officially declared to be his parent under the immigration laws, so that the latter might

remain permanently in the United States. Ramon Fiallo's petition was rejected, the Consul stating that Fiallo senior could not be declared the parent of an American citizen since his child was illegitimate. At present, both parents are living together in this country with their child; although the father could qualify as a parent if he legitimated his son, he and the boy's mother do not wish to marry.

Cleophus Warner, a naturalized American citizen, attempted to have his illegitimate son Serge, a citizen of the French West Indies, officially declared to be his child within the meaning of the Act by filing a petition with immigration authorities in New York, so that the boy might remain permanently with his father in this country. The petition was rejected since the boy was neither the father's legitimate nor legitimated offspring, and hence he could not meet the Act's definition of a child.

Trevor and Arthur Wilson are two brothers under twenty-one years of age who are permanent residents of the United States. After the death of their biological mother they sought to have their father, a citizen of Jamaica, officially classified as their parent so that he might qualify for permanent residency in this country. It is not clear whether their petition has already been denied, but denial is certain since the boys were never legitimated and hence their father cannot qualify as a parent under the Act.

The alien fathers and son in this action believe that their only realistic avenue of admittance to this country on a permanent basis is through classification as the parent or child of an American citizen or permanent resident. Fiallo senior has sought a labor certificate unsuccessfully in the past; Wilson senior alleges that the only job for which he is qualified—that of general handyman—is one for which the required certificate is not granted.

Subject matter jurisdiction is conferred on this Court by section 279 of the Act, Title 8 U.S.C. §1329.

A threshold question is presented with regard to Fiallo's standing to maintain this action. The administrative decision on which Fiallo bases this suit is the denial of his petition by the United States consul at Santo Domingo. Decisions of consuls granting or denying a visa have been held

to be immune from judicial review. *See, e.g., Loza-Bedoya* v. *INS*, 410 F.2d 343 (10th Cir. 1975). We note, however, that the petition in question here did not constitute an application for a visa, but was a preliminary declaration of immigrant status. We will not extend consular nonreviewability, insofar as that rule has been recognized, beyond the actual grant or denial of a visa. This is predicated upon our reluctance to insulate entirely the actions of any public official from judicial scrutiny, and thereby foreclose a group of plaintiffs from seeking relief in the courts. Plaintiff allo, therefore, is not barred from bringing this action.

Turning to the merits, we begin with the proposition that Congress' power to make rules for the admission and expulsion of aliens is exceptionally broad.

> This Court without exception has sustained Congress' plenary power to make rules for the admission of aliens and to exclude those who possess those characteristics which Congress has forbidden. Over no conceivable subject is the legislative power . . . more complete than it is over the admission of aliens.
> *Kliendienst* v. *Mandel*, 408 U.S. 753, 766, 92 S.Ct. 2576, 2583, 33 L.Ed. 2d 633 (1972) (quotation marks and citations omitted)

The limits to the exercise of this power are few, for an alien has no constitutional right to enter or remain in this country, *Kliendienst* v. *Mandel*, *supra*. Moreover, he may be denied entrance on grounds which would be constitutionally suspect or impermissible in the context of domestic policy, namely, race,[3] physical condition,[4] political beliefs,[5] sexual proclivities,[6] age,[7] and national origin.[8]

In regulating the admission of aliens who are the spouses, parents, and children of American citizens and permanent

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[3] *Dunn* v. *INS*, 499 F.2d 856, 858 (9th Cir. 1974).
[4] *U.S.* v. *Esperdy*, 277 F.2d 537, 539 (2d Cir. 1960).
[5] *Kliendienst* v. *Mandell*, supra.
[6] *Boutilier* v. *INS*, 387 U.S. 118, 87 S.Ct. 1563, 18 L.Ed. 2d 661 (1967).
[7] *Nazareno* v. *Attorney General of the United States*, 512 F.2d 936 (D.C. Cir. 1975).
[8] *Faustino* v. *INS*, 432 F.2d 429, 431 (2d Cir. 1970), *cert. denied*, 401 U.S. 921, 91 S.Ct. 909, 27 L.Ed. 2d 824 (1971); *Hitai* v. *INS*, 343 F.2d 466, 467 (2d Cir. 1965), *cert. denied*, 382 U.S. 816, 86 S.Ct. 36, 15 L.Ed. 2d 63 (1965.

residents, Congress has chosen to specify the kind of relationships which are, for purposes of the immigration laws, embraced within those terms. This is a perfectly proper exercise of the Congressional responsibility to admit into this country those individuals who will be desirable additions to our populace. This includes individuals who will respect our system of government [9] and who will be useful additions to our labor force,[10] as well as those whose lives reflect personal standards of conduct important to our society's sense of morality. And while the Congress' view about what kind of marital or parental relation should be encouraged in this country may differ from the individual views held by the members of the courts, it is not for the judiciary to usurp the legislative function and replace the Congressional standards with its own.

A number of courts have ruled on the question of whether, in the immigration field, Congress may constitutionally apply its own standards with respect to the status of familial relations, and we note that this power has consistently been upheld. In *United States* v. *Diogo*, 320 F.2d 898 (2d Cir. 1963), this Court held that a marriage valid under state law need not be recognized as valid under the immigration laws.

> Of course Congress may adopt a federal standard of *bona fides* for the limited purpose of denying immigration priorities to persons whose marriages do not meet the standard. That standard, embodied in the Congressional understanding of the terms "marriage" and "spouse" as those terms appear in the immigration statutes is, of course, the relevant standard to apply in exclusion or deportation proceedings brought under the statutory provisions appropriate. 320 F.2d at 905.

In *Faustino* v. *INS*, 432 F.2d 429 (2d Cir. 1970), *cert. denied*, 401 U.S. 921, 91 S.Ct. 909, 27 L.Ed. 2d 824 (1971), we held that it was not unconstitutional for Congress to permit citizen children over the age of twenty-one to bring their alien parents into this country without regard to nu-

[9] *Kliendeinst* v. *Mandel*, *supra*.

[10] *See, e.g., Buckley* v. *Gibney*, 332 F.Supp. 791 (S.D.N.Y. 1971)

merical quotas, but to deny that same privilege to citizen children under that age. Accord, *Perdido* v. *INS*, 420 F.2d 1179 (5th Cir. 1969). And in an analagous situation the District of Columbia Circuit upheld the application of one aspect of the Act's restrictive definition of child to the provision of the Act granting priority status to the sons and daughters of American citizens;[11] the effect of the holding was to deny the status of child, and hence the consequent statutory benefits, to aliens who were adopted by American citizens after their fourteenth birthdays.[12] *Nazareno* v. *Attorney General of the United States*, *supra*.

There is no doubt that Congress can establish classifications which result in the granting of benefits to one group of individuals, and their denial to another. Unless the immigration laws in question are wholly devoid of any conceivable rational purpose,[13] or are fundamentally aimed at achieving a goal unrelated to the regulation of immigration,[14] they are not unconstitutional encroachments on the right to equal protection of the laws.

At the request of the Court the Legal Aid Society representing the plaintiffs submitted a most able and exhaustive post-trial memorandum demonstrating via statistical tables and many treatises its thesis that the "courts are giving increasing legal recognition to the reality that unwed

[11] 8 U.S.C. §115 (a) (1)

[12] This is one of the several types of individuals whom we might commonly call children, but who are excluded from the Act's definition of that term. Others excluded are married children, children over twenty-one years of age, stepchildren who were over eighteen when the marriage creating their status occurred, children who were legitimated after they were eighteen. Similarly, the mothers and fathers of these individuals are not accorded the status of parents within the meaning of the Act.

[13] This Court has held that there is no need to apply the test of compelling state interest in immigration cases, since alienage is not a suspect classification for purposes of legislation regulating the admission and expulsion of aliens. *Noel* v. *Chapman*, 508 F.2d 1023, 1028 (2d Cir. 1975).

[14] In this regard we note that where the Congressional purpose of any law regarding aliens is not to regulate immigration but to invidiously discriminate against American citizens, permanent residents, or already-admitted aliens, that law cannot—in contrast to the one under consideration here—withstand constitutional scrutiny. *See Mow Sun Wong* v. *Hampton*, 500 F.2d 1031, 1036 (9th Cir. 1974); *Ramos* v. *United States Civil Service Commission*, 376 F.Supp. 361, 366 (D. Puerto Rico 1974); *cf. Graham* v. *Richardson*, 403 U.S. 365, 91 S.Ct. 1848, 91 L.Ed. 2d 534 (1971).

fathers, like mothers, have close ties to their illegitimate children." (Post-Argument Memorandum, p. 17). From these statistics and extensive bibliography counsel draw the conclusion that "the evidence leaves no rational underpinning for discriminatory treatment of unwed natural fathers and their illegitimate children, and leaves no doubt of the patent unconstitutionality of the severe and extreme form of discrimination effectuated by the statutory provisions challenged herein." (Id. p. 21). These conclusions, plaintiffs say (Id. p. 1), demonstrate "the utter irrationality of the unwarranted conclusive presumptions effectuated by the challenged provisions. . ."

However, in view of the need to establish administrative procedures abroad which can process immigration applications efficiently, avoid extremely difficult problems of investigation and proof, and minimize the potential for sham claims, we cannot say that the legislative decision to exclude unwed, biological fathers and their illegitimate children from the statutory definitions of parent and child is patently unreasonable. *Cf. Faustino* v. *INS*, *supra*. For example, while the names of biological mothers routinely appear on such documents as birth certificates, this may not be the case where unmarried fathers have not acknowledged paternity officially at about the time of birth. Although such evidence would not necessarily be conclusive of one's status as a parent, nevertheless we perceive that it might be more difficult for an unrelated adult to pose as a child's mother than a child's father, where the birth certificate contains a definite name and identification of the mother only.

As a matter of law, therefore, the challenged immigration provisions are not so arbitrary or capricious as to be unconstitutional; accordingly, we conclude that plaintiffs' provocative statistics and ably documented argument, which certainly would merit Congress' attention, cannot be given weight here, lest this Court engage in the kind of policy-making activity which is properly the province of the legislative branch and not the judiciary.

Plaintiffs urge that Congress' primary purpose in exempting the parents of children of American citizens and

permanent residents from quota limitations and labor certification requirements was to enable families to be together in the United States. Without question, the policy behind the statutory enactments was a benevolent one; however, we cannot accept plaintiffs' unspoken assumption that *they*, and not Congress, should determine who constitutes the "family" which shall be allowed to enter this country on a priority basis. The statutory language is quite clear in its exclusion of unwed fathers and their illegitimate children; the fact that Congress focused upon the type of family which it determined should have the right to emigrate *en masse* to our shores[15] indicates that it may well have decided that, on balance, unwed fathers would not have such relations with their illegitimate children as would justify their being given this special exemption from the normal immigration requirements which apply to all other individuals seeking visas for permanent residency.

Even if it be assumed *arguendo* that biological, unwed fathers should under all circumstances be accorded the rights of parents, plaintiffs' constitutional claim cannot prevail. The possibility of joining one's closest family in the United States is a privilege granted by statute, not a right given by the Constitution.

> There can be no doubt but that [the appellants] as unadmitted and non-resident aliens have no constitutional right to enter and remain in this country. It is equally clear that their wives as resident aliens have no constitutional right to keep them here on the theory that the integrity of the family is protected by equal protection principles.
> *Noel* v. *Chapman*, 508 F.2d 1023, 1027 (2d Cir. 1975).

The same rule has been applied by this Court when the

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[15] Counsel for the Government persuasively suggested at oral argument that plaintiffs' position could have sobering consequences if adopted by immigration officials: an unwed mother living here could bring to the United States all of her illegitimate children, each of whom could bring over his or her biological father; each father could then bring over *all* of the children he has ever fathered, and thereafter *each* of *those* children could bring over his or her mother, who could then bring over all of *her* illegitimate children, etc., etc., etc.

individual seeking to challenge an alien's expulsion was the alien's United States citizen-child. *Enciso-Cardozo* v. *INS*, 504 F2d 1252, 1253 (2d Cir. 1974); *cf. Faustino* v. *INS*, *supra*. As we recognized in *Noel* v. *Chapman*, *supra* at 1027–8, the burden of separation from one's kin which occurs when an alien relative is properly excludable under our immigration laws and the American citizen or resident determines not to leave this country in order to be with the alien, is not the equivalent of the statutory destruction of the marriage or family relationship. Certainly a difficult choice is involved, but it is not one which is forbidden by the Constitution.

Plaintiffs' final argument is that the operation of the Act's definition of parent and child works a constitutionally impermissible hardship on them. While we are not unmindful of plaintiffs' plight, we have held in the past that such incidental impact on the family as the operation of the immigration laws may have is not violative of the Constitution. *Noel* v. *Chapman*, *supra; Enciso-Cardozo* v. *INS*, *supra; accord*, *Robles* v. *INS.*, 485 F.2d 100 (10th Cir. 1973); *Silverman* v. *Rogers*, 437 F.2d 102 (1st Cir. 1970), *Perdido* v. *INS*, 420 F.2d 1179 (5th Cir. 1969). The law is at times painful to some, but it cannot on that basis alone be automatically invalidated as to all.

Consideration of the class action issue is unnecessary in the light of our decision.

/S/ LEONARD P. MOORE
U.S.C.J.

/S/ HENRY BRAMWELL
U.S.D.J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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RAMON MARTIN FIALLO, an infant by his Mother, CELIA FRANCISCA MICHAEL RODRIGUEZ, and RAMON AUGUSTO RAFAEL FIALLO-SONE; CLEOPHUS RUPERT WARNER and SERGE PATRICK WARNER, an infant by his father, CLEOPHUS RUPERT WARNER; TREVOR ASTON WILSON and EARL ANTONIO WILSON, Infants by their aunt and next friend LENA HUDSON, and ARTHUR CECIL WILSON, on behalf of themselves and all other persons similarly situated,

Plaintiffs,

—against—

EDWARD H. LEVI, individually and as Attorney General of the United States; LEONARD E. CHAPMAN, Jr., Individually and as Commissioner of the Immigration and Naturalization Service; MAURICE KILEY, individually and as District Director of the Immigration and Naturalization Service for New York City; HENRY KISSINGER, individually and as Secretary of State of the United States; LEONARD WALENTYNOWICZ, individually and as Administrator of the Bureau of Security and Consular Affairs, Department of State; JULIO ARIAS, individually and as Director of Visa Office, Bureau of Security and Consular Affairs, Department of State; CATHERINE M. HURLEY, individually and as Consul of the United States of America, Santo Domingo, Dominican Republic,

Defendants.

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DISSENTING OPINION

WEINSTEIN, District Judge (Dissenting):

I. *Issues*

The constitutionality of the definitions of "parent" and "child" in the Immigration and Naturalization Laws is challenged. Section 101 (b) (1) and (2) of the Immigration and Nationality Act (Act), Title 8 U.S.C. § 1101(b) (1) and (2) (1970). Unlike mothers and their illegitimate children, fathers, and their illegitimate children, are excluded from the definition of "parent" and "child". They are therefore ineligible for certain exemptions given citizens' relatives who are trying to enter the country: citizen fathers can not have their migrating illegitimate children exempted from numerical quotas and labor certification requirements as their "immediate relatives"; citizen and permanent resident illegitimate children can not have their migrating fathers exempted from the labor certification requirement. Insofar as pertinent, the definitional provision reads:

> "(1) The term 'child' means an unmarried person under twenty-one years of age who is—
> (A) a legitimate child; or
> * * *
> (D) an illegitimate child, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother;
> * * *
> "(2) The terms 'parent', 'father', or 'mother' mean a parent, father, or mother only where the relationship exists by reason of any of the circumstances set forth in subdivision (1) of this subsection."

8 U.S.C. §1101(b) (1970).

The questions presented are (1) whether a statute making it more difficult for a parent and his child—one of whom is a citizen or permanent resident—to live together in this country solely because of the sex of the parent and the illegitimacy of the child is valid under the Fifth Amendment; and (2) whether a federal court is without power to declare such a statute invalid because it is a part of the immigration

laws. The answers should be no. The Constitutional road to equality of the sexes is open to men as well as women. Each of these plaintiffs is being deprived of a critical part of his "life . . . without due process of law." U.S. Const. Fifth Amend.; *cf. id.* Fourteenth Amend. ("equal protection of the laws").

Legal discrimination between men and women or legitimates and illegitimates with no rational basis is no longer tolerated. Where, as here, statutory invidious discrimination punishes American citizens by denying them familial association, one of the most precious attributes of humanity, the courts should say what is plain: the statute is unconstitutional. The wrong to parent and to child is not reduced by characterizing the one as a "biological father", without regard for his progeny. Such disdain for filial affection is incompatible with a Constitution embodying the highest ideals of a civilized nation such as ours.

II. *Facts*

Plaintiffs Ramon Fiallo and Ramon Fiallo-Sone, son and father

Ramon Fiallo is a United States citizen, born in New York City in 1971. Although his father, Mr. Fiallo-Sone, was not married to his mother, his father's name appears on his birth certificate and his father has nurtured him since his birth. An American consul has informed Mr. Fiallo-Sone that he is not eligible for an immigrant visa or permanent residence status without a labor certificate, and that while the labor certificate requirement is waived in the case of fathers of citizen children, the waiver is only available if the child is legitimate issue. A foreign mother of an illegitimate citizen would have obtained the waiver.

Plaintiffs Serge Warner and Cleophus Warner, son and Father

Cleophus Warner, a naturalized citizen, is the unwed father of Serge Warner, who was born in the French West Indies in 1960. Mr. Warner's name appears on Serge's birth certificate, he registered as Serge's father shortly after

Serge's birth, and he has acknowledged paternity. Mr. Warner has supported his son since the child's birth. In 1969 Serge, in accord with his parents' and his own desires, entered the United States to live with his father. Father and son took steps to obtain an immigrant visa and permanent residence status for Serge in 1972. The Immigration and Naturalization laws allow citizen parents to bring alien children into the United States as "immediate relatives" without regard to the applicable numerical limitation on immigrants. Mr. Warner's petition was denied on the ground that Serge was not his legitimate issue as required by statute. Had the petition been by a mother who was a naturalized citizen, or had the child been legitimate, the petition would have been granted.

Plaintiffs Trevor and Earl Wilson and Arthur Wilson, sons and father

Trevor and Earl Wilson, who are now permanent residents of the United States, were born in Jamaica in 1957 and 1959 respectively. Arthur Wilson acknowledges the boys as his illegitimate sons. He lived with them and supported them until 1968, at which time they moved to New York City with their mother. From 1968 until 1974 Mr. Wilson maintained his relationship with his sons by visits and correspondence. He also continued to support them financially. After their mother died in 1974, the two boys asked their father to come to the United States to live with them. But Mr. Wilson was only able to stay for as long as an emergency visa allowed. Since his children are illegitimate, Mr. Wilson is unable to settle in the country without a labor certification. Were a mother in Mr. Wilson's position, or were the children legitimate, the parent would have been able to enter the country without a labor certification.

III. *Law*

The position of these three families illustrates the severe effects on American citizens and permanent residents from the Act's discrimination between male and female parents and between legitimate and illegitimate children in its

definitions of parent and child. The government does not contend that the relationship of parent to child does not exist or that a strong emotional bond between the father and child is lacking in any of these cases. Its position is that the statute compels the discrimination.

This statute, defendant insists, is not subject to judicial review. Characterizing the classification as one of aliens for the purpose of their exclusion from the country, it contends that Congressional power to exclude aliens is unfettered. *See, e.g., Chae Chan Ping* v. *United States*, 130 U.S. 581, 9 S.Ct. 623, 32 L.Ed. 1068 (1889); *Faustino* v. *Immigration and Naturalization Service*, 432 F.2d 429, 431 (2d Cir. 1970) (Per Curiam), *cert. denied*, 401 U.S. 921, 91 S.Ct. 909, 27 L.Ed.2d 824 (1971).

But this is not a simple case of classifying aliens for the purpose of preferring some over others for entry. Rather, Congress has hinged immigrants' access to this country on their relationship to citizens and permanent residents. The question thus becomes whether a Congressional classification of citizens and permanent residents which severely disadvantages them may escape traditional constitutional scrutiny merely because it is set in alienage legislation.

If the classification were based on race, rather than gender or legitimacy, the court's power would be no different. Were Blacks, for example, excluded from the list of those American citizens who could bring in their relatives without regard to quotas, no court would let the statute stand. The Constitution, and in particular, the Fifth Amendment, protects citizens from abusive or discriminatory government action. Packaging a discriminatory classification of citizens in alienage legislation can not insulate it from judicial scrutiny.

There is ample Supreme Court precedent for intervention when enforcement of the Act burdens citizens' constitutional rights. *United States* v. *Brignoni-Ponce*, U.S. , 95 Sup.Ct.2574, L.Ed.2d (1975); *Almeida-Sanchez* v. *United States*, 413 U.S. 266, 273 n.5, 93 S.Ct. 2535, 2539, 37 L.Ed.2d 596 (1973). *See also, Burrafato* v. *United States Dept. of State*, F.2d (2d Cir. 1975) (dicta). The Court has recognized procedural due process and Fourth Amendment

limitations on the government's exclusion and expulsion of aliens. *See, e.g., Wong Yang Sung* v. *McGrath*, 339 U.S. 33, 49–50, 70 S.Ct. 445, 454, 94 L.Ed. 615 (1950); *Kwock Jan Fat* v. *White*, 253 U.S. 454, 459, 464, 40 S.Ct. 566, 568, 570, 64 L.Ed. 1010 (1920); *Kaoru Yamataya* v. *Fisher*, 189 U.S. 86, 100, 23 S.Ct. 611, 614, 47 L.Ed. 721 (1903): *Cf. Lennon* v. *INS* F.2d (2d Cir. 1975).

When courts have been faced with challenges to other sections of the Act which classify aliens in terms of their relationship to citizens, they have not shrunk from traditional equal protection analysis. *See Perdido* v. *Immigration and Naturalization Service*, 420 F.2d 1179, 1181 (5th Cir. 1969); *Faustino* v. *Immigration & Naturalization Service*, 302 F.Supp. 212, 215 (S.D.N.Y. 1969), *aff'd*, 432 F.2d 429 (2d Cir. 1970), *cert. denied*, 461 U.S. 921, 91 S.Ct. 909, 27 L.Ed.2d 824 (1971). *Cf. Noel* v. *Chapman*, 508 F.2d 1023, 1026–9 (1975).

So blatant a discrimination on the basis of gender and legitimacy is seldom found in modern statutes. Illegitimacy as a basis for denial of rights available to legitimates has been repeatedly struck down as invidious and lacking in rational basis. *See, e.g., Jiminez* v. *Weinberger*, 417 U.S. 628, 632, 94 S.Ct. 2496, 2499, 41 L.Ed.2d 363 (1974); *New Jersey Welfare Rights Organization* v. *Cahill*, 411 U.S. 619, 620–621, 93 S.Ct. 1700, 1701, 36 L.Ed.2d 543 (1973) (Per Curiam); *Gomez* v. *Perez*, 409 U.S. 535, 538, 93 S.Ct. 872, 875, 35 L.Ed.2d 56 (1973) (Per Curiam); *Weber* v. *Aetna Casualty and Surety Co.*, 406 U.S. 164, 175–176, 92 S.Ct. 1400, 1406–1407, 31 L.Ed. 2d 768 (1972); *Glona* v. *American Guaranty and Liability Insurance*, 391 U.S. 73, 76, 88 S.Ct. 1515, 1517, 20 L.Ed.2d 441 (1968); *Levy* v. *Louisiana*, 391 U.S. 68, 70–72, 88 S.Ct. 1509, 1510–1511, 20 L.Ed. 2d 436 (1968); *Tanner* v. *Weinberger*, F.2d (6th Cir. 1975). Gender classifications have also been treated as invalid. *See, e.g., Turner* v. *Dept. of Employment Security*, U.S. , Sup.Ct. , L.Ed.2d (1975); *Weinberger* v. *Wiesenfeld*, U.S. , 95 S.Ct. 1225, 43 L.Ed.2d 5145)g *Stanton* v. *Stanton*, U.S. , 95 S.Ct. 1373, 43 L.Ed.2d 688 (1975); *Taylor* v. *Louisiana*, 419 U.S. 522, 95 S.Ct. 692, 42 L.Ed.2d 690 (1975); *Frontiero* v. *Richardson*, 411 U.S. 677, 93 S.Ct. 1764, 36 L.Ed.2d 583 (1973); *Reed* v. *Reed*, 404 U.S. 71, 92 S.Ct. 251, 30 L.Ed.2d 225 (1971); Ginsburg, Gender and the Constitution, 44 U.Cinn. L. Rev. 1 (1975).

The legislative history and the statutory scheme leave no doubt that the exclusive purpose of Congress was to maintain or reunite family units which include United States citizen or permanent resident members. Not a shred of evidence has been produced to support the government's claim that the statutory purpose was to prevent spurious paternity claims by unwed natural fathers. As one of the provision's co-sponsors put it: "This bill is praiseworthy in its fundamental purpose—to reunite families." 103 Cong. Rec. 15497 (1957) (remarks of Senator Pastore). *See also*, H.R.Rep. No. 1199, 85th Cong., 1st Sess. 7–8 (1957); H.R. Rep. No. 1365, 82d Cong., 2d Sess. 29 (1952); 1957 U.S. Code Cong. & Ad. News 2020–2021; 103 Cong. Rec. 16719 (1957) (remarks of Senator Kennedy); 103 Cong. Rec. 16307 (1957) (remarks of Representative Rodino); *Immigration Service* v. *Errico*, 385 U.S. 214, 219–220 and in. 9, 87 S.Ct. 473, 477–478, 17 L.Ed.2d 318 (1966); *Nation* v. *Esperdy*, 239 F.Supp. 531, 534–535 (S.D.N.Y. 1965). The courts must distill the general legislative purpose from the legislative history, particularly where it supports a reasonable non-sexist interpretation. *Weinberger* v. *Wiesenfeld*, U.S. , 95 S.Ct. 1225, 1233–35, 43 L.Ed.2d 514 (1975). In view of the Congressional purpose to reunite families, there is no rational basis for the statutory classification denying the parent-child status to unwed natural fathers and their illegitimate children while automatically granting it to persons in other family relationships.

Even if Congress were motivated by a desire to discriminate against men and illegitimates in a way harmful to American citizens, the statute could not stand.

It is firmly established that a natural parent, whether father or mother, and a child, whether legitimate or not, have fundamental, constitutionally protected interests in mutual companionship and a life together.

> "The rights to conceive and to raise one's children have been deemed 'essential," Meyer v. Nebraska, 262 U.S. 390, 399, 43 S.Ct. 625, 626, 67 L.Ed. 1042 (1923), 'basic

civil rights of man,' Skinner v. Oklahoma, 316 U.S. 535, 541, 62 S.Ct. 1110, 1113, 86 L.Ed. 1655 (1942), and '[r]ights far more precious . . . than property rights,' May v. Anderson, 345 U.S. 528, 533, 73 S.Ct. 840, 843, 97 L.Ed. 1221 (1953)."

Stanley v. Illinois, 405 U.S. 645, 651, 92 S.Ct. 1208, 1212, 31 L.Ed. 2d 551 (1972). *See also Weinberger* v. *Salfi*, U.S. , 95 S.Ct. 2457, L.Ed.2d (1975); *Weber* v. *Aetna Casualty & Surety Co.*, 406 U.S. 164, 169, 92 S.Ct. 1400, 1403, 31 L.Ed.2d 768 (1972); *Levy* v. *Louisiana*, 391 U.S. 68, 71, 88 S.Ct. 1509, 1511, 20 L.Ed.2d 436 (1968).

"It is no less important for a child to be cared for by its . . . parent when that parent is male rather than female. And a father, no less than a mother, has a constitutionally protected right to the 'companionship, care, custody, and management' of 'the children he has sired and raised, [which] undeniably warrants deference and, absent a powerful countervailing interest, protection.' Stanley v. Illinois, 405 U.S. 645, 651, 92 S.Ct. 1208, 1212, 31 L.Ed.2d 551 (1972)."

Weinberger v. *Wiesenfeld*, U.S. , , 95 S.Ct. 1225, 1235, 43 L.Ed. 2d 514 (1975).

Courts now recognize that unwed fathers, like mothers, often have strong ties of affection to their illegitimate children and desire a continuing relationship with them. *See, e.g., Miller* v. *Miller*, 504 F.2d 1067 (9th Cir. 1974) (Per Curiam) (statute permitting adoption without notice to natural father of illegitimate unconstitutional); *People ex rel. Slawek* v. *Covenant Children's Home*, 52 Ill.2d 20, 284 N.E.2d 291 (1972) (statute precluding father of illegitimate from asserting right to child and denying custody unconstitutional); *In Re Mark T.*, 8 Mich. App. 122, 154 N.W. 2d 27, 35 (Ct. App. 1967) (custody of illegitimate child awarded to father after mother's release of child for adoption) and cases cited 154 N.W.2d at 33 n. 7, 154 N.W.2d at 35 n. 13; *R.* v. *F.*, 133 N.J.Super. 396, 273 A.2d 808 (Juv. & Dom. Rel. Ct. 1971) (denying father and his natural child of right to see each other deprives them of equal protection); *Application of Juan R.*, (N.Y.Fam.Ct.), in N.Y.L.J., Oct. 28, 1975, at 1, col. 3 (putative father who has established paternity may bring action to acquire visiting rights without litigation custodial issues); *Stone* v. *Chip*, 68 Misc. 2d 134, 326 N.Y.S.2d 520 (Fam.Ct.1971) (criticizing rule that mother should have child absent proof she is unfit); *Conley* v. *Johnson*, 24 N.C.App. 122, 210 S.E.2d 88 (Ct.App. 1974) (court may order visitation rights for father of illegitimate despite mother's objection); *Hammack* v. *Wise*, 211 S.E.2d 118, 121 (W.Va. 1975) (father awarded custody of illegitimate child); *State ex rel. Lewis* v. *Lutheran Social Services*, 59 Wisc. 2d 1, 207 N.W.2d 826 (1973) (father of illegitimate must be given a hearing on termination of his parental rights); K. Davidson, R. Ginsburg and H. Kay, "Text Note: Illegitimacy and Sex Based Discrimination," Sex Based Discrimination 309–329 (1974); Note, The Emerging Constitutional Protection of the Putative Father's Parental Rights, 70 Mich. L. Rev. 1581 (1972).

State legislatures are systematically revising laws in order to expand the parental rights of unwed fathers. *See e.g.*, Fla. Stat. Ann. § 63.062 (1974); Hawaii Rev. Laws § 578–2 (Supp. 1974); S.H. Ill. Ann. Stat. ch. 4, §§ 9.1–1E, 9.1–8, 9.1–12a (1975); Burns Ind. Stat. Ann. § 31–3–1–6 (Supp. 1975); Me. Rev. Stat. Ann. § 532 (Supp. 1975); Mich. Comp. Laws Ann. § 710.3a (Supp. 1973); Minn. Stat. Ann. §§ 259.24, 259.26, 259.261 (Supp. 1975); N.D. C.C.A. § 14–15–20 (1971); R.I. Gen. Laws § 15–7–5 Supp. 1974); Utah Code Ann. § 78–30–4 (Supp. 1975); Va. Code § 63.1–225 (Supp. 1975); Wash. Rev. Code Ann. §§ 26.32.030, 26.32.085, 26.24.190, 26.28.110 (Supp. 1974); Wisc. Stat. Ann.ch. 263, §§ 48.02 (ii), 48.42, 48.02, and 48.425 (Supp. 1975).

The clear trend is consonant with national policy recognized by Congress in its adoption of the Equal Rights Amendment and in its enactment of a series of other statutes designed to overcome outmoded concepts of sex discrimination. *See, e.g.*, Proposed Constitutional Amendment, S.J. Res. 9, 92d Cong., 1st Sess., 118 Cong. Dec. 9568 (1972), H.R. J. Res. 208, 92d Cong., 1st Sess., 117 Cong. Rec. 35782 (1971); Civil Rights Act of 1964, Title

VII, 42 USC § 2000(e)–5 (1974), Equal Pay Act of 1963, 29 U.S.C. §206(d) (1965).

The fact that Congress has not yet had the opportunity to winnow through the enormous federal statutory materials to carry out its clear present policy gives added force to the argument that the vestigial remainder of such discrimination embodied in the Act should be closely reviewed by the courts.

Social science literature and empirical studies illustrate why courts, as well as legislatures, no longer allow legislative exclusion of fathers of illegitimates from statutory benefits. Such discrimination is based on an archaic and overbroad stereotype of unwed fathers. Most pregnancies result from exclusive long-term relationships between the father and mother. M. Sauber and E. Rubinstein, Experiences of the Unwed Mother as a Parent 27 (1965); Herzog, "Some Notes About Unmarried Fathers," 1966 Child Welfare 194; Pope, "Unwed Mother and Their Sex Partners," 29 J. of Marriage & the Family, 555, 558 (1967). Many fathers not only continue the relationship with the mother after the child's birth, Sauber and Rubinstein, *supra*, at 53, but also demonstrate genuine interest in and concern for their children. R. Pannor, F. Massarik, and B. Evans, The Unmarried Father 92 (1971); Chaskel, "Changing Patterns in Services for Unmarried Parents," 49 Social Casework 3, 10 (1968); Wessel, "A Physician Looks at Services for Unmarried Parents," 49 Social Casework 11, 12 (1968).

Even those fathers not living with their children assume many of the functions of fatherhood vital to the well-being of children, including financial and emotional support. One statistical study found that between 59% to 83% of these fathers contribute money for their child's expenses and approximately 70% visit their children. Ewer, 1971 Maternal and Child Health Service, Project H–214–2, Characteristics of AAPP Unwed Fathers—A Descriptive Study 2, Table 33 (unpublished, Div. of Research, Maternal and Child Health Service, HSMHA).

An even more striking indication of the strength of the fathers' parental commitment is that an increasing number of illegitimate children are living with their fathers. In 1970

13.9% of the children under eighteen living with single parents, that is, parents who have never been married, lived with their single fathers, as compared to 9.2% in 1960. U.S. Bur. of the Census, 1 U.S. Census of the Population 1970, Characteristics of the Population, Pt. 1, U.S. Summary—Sec. 2, Table 206 (1973); *id.*, U.S. Census of the Population 1960, Table 185 (1963).

The three plaintiff families are good examples of the variety of situations in which strong familial bonds tie illegitimate children to their fathers. Ramon Fiallo's parents, although unmarried, have functioned as a family since the child's birth. Cleophus Warner and the Wilson boys have been supported financially by their fathers since birth. They now depend upon their fathers to be their sole parents because of a mother's choice to live without the child in one case and the mother's death in the other.

The challenged provisions, by excluding only fathers and their illegitimate children from statutory benefits, are based upon an irrebuttable presumption that fathers do not have close family ties with their illegitimate offspring, a presumption belied by the statistical evidence, sociological evaluation of family life, and the facts in the three cases before us. Such a presumption without basis in fact is invalid. *See, e.g., Cleveland Bd. of Ed.* v. *LaFleur*, 414 U.S. 632, 94 S.Ct. 791, 39 L.Ed.2d 52 (1974); *United States Dept. of Agriculture* v. *Murry*, 413 U.S. 508, 93 S.Ct. 2832, 37 L.Ed.2d 767 (1973); *Vlandis* v. *Kline*, 412 U.S. 441, 93 S.Ct. 2230, 37 L.Ed.2d 63 (1973). *Cf.* Note, The Irrebuttable Presumption Doctrine in the Supreme Court, 87 Harv. L. Rev. 1534 (1974).

Whatever assumed basis there may once have been for such sexist presumptions no longer exists. Rationality must be viewed in the light of current knowledge. *See Turner* v. *United States*, 396 U.S. 398, 90 S.Ct. 642, 24 L.Ed.2d 610 (1970).

Even if we accepted the government's contention that the natural fathers of illegitimate children were singled out by Congress to prevent spurious claims, the statutory scheme is not rationally related to that end. See *Jiminez* v. *Weinberger*, 417 U.S. 628, 634–6, 94 S.Ct.2496, 2500–01, 41

L.Ed.2d 363 (1974), where the Court invalidated provisions of the Social Security Act denying children's insurance benefits to a subclass of illegitimate children because the structure of the statute was not reasonably related to the purported purpose, prevention of spurious claims.

Paternity or maternity must be claimed and proven in cases involving legitimate children, legitimated children, step-children and illegitimate children to the satisfaction of immigration and consular officials. The burden of proof of any familial relationship is on the United States citizen or permanent resident and the alien relative. Immigration authorities may require birth certificates, marriage certificates, baptismal certificates, school records, census records, affidavits, letters, photographs, remittances, proof of custody, proof of support, blood test, personal testimony, and other evidence. 8 C.F.R. § 204.2 (1975). The potential for spurious claims is as great for those included in the statutes' definitions of parent and child as for illegitimate children and their fathers. Women claiming to be mothers of illegitimate children and men claiming to be fathers of legitimated, legitimate, or illegitimate children in a step-child situation, and their respective children, would have as much difficulty or ease in presenting fraudulent proof as would a man claiming to be the father of an illegitimate child and his child.

And yet, quota restrictions are waived in the case of a step-child or legitimated child if paternity is proven, but a conclusive statutory presumption denies any opportunity of proof in the case of an illegitimate child. A conclusive presumption supposedly established to prevent spurious claims can not be upheld when the potential for fraud is similar for the excluded group and for groups receiving the statutory benefits. *Jiminez* v. *Weinberger*, 417 U.S. 628, 636–637, 94 S.Ct. 2496, 2501–02, 41 L.Ed. 363 (1974). *Cf. U.S. Dept. of Agriculture* v. *Moreno*, 413 U.S. 528, 93 S.Ct.2821, 37 L.Ed.2d 782 (1973); *Vlandis* v. *Kline*, 412 U.S. 441, 453–4, 93 S.Ct. 2230, 2237, 37 L.Ed.2d 63 (1973); *Gomez* v. *Perez*, 409 U.S. 535, 538, 93 S.Ct. 872, 875, 35 L.Ed.2d 56 (1973); *Stanley* v. *Illinois*, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972); *Glona* v. *American Guaranty & Liability In-*

surance Co., 391 U.S. 73, 76, 88 S.Ct. 1515, 1517, 20 L.Ed.2d 441 (1968). This rigid presumption must be replaced by "more individualized means" of determining the family relationship. *Turner* v. *Dept. of Employment Security*, U.S. , , S.Ct. , L.Ed.2d (1975).

Practically speaking, the government's contention that the restrictive definition of parent is necessary to prevent spurious claims is nothing more than a plea on behalf of administrative convenience. But it has been clear for some time now that a scheme built upon administrative convenience cannot stand when invidious discrimination results. *See, e.g., Frontiero* v. *Richardson*, 411 U.S. 677, 690, 93 S.Ct. 1764, 1772, 36 L.Ed.2d 583 (1973).

IV. *Conclusion*

Plaintiffs' request for summary judgment in their favor should be granted.

Dated: Brooklyn, New York
November 28, 1975.

/S/ JACK B. WEINSTEIN

U. S. D. J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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RAMON MARTIN FIALLO, an infant by his Mother, CELIA FRANCISCA MICHAEL RODRIGUEZ, and RAMON AUGUSTO RAFAEL FIALLO-SONE; CLEOPHUS RUPERT WARNER and SERGE PATRICK WARNER, an infant by his father, CLEOPHUS RUPERT WARNER: TREVOR ASTON WILSON and EARL ANTONIO WILSON, on behalf of themselves and all other persons similarly situated,

Plaintiffs,

-against-

EDWARD H. LEVI, individually and as Attorney General of the United States; LEONARD E. CHAPMAN, JR., individually and as Commissioner of the Immigration and Naturalization Service; MAURICE KILEY, individually and as District Director of the Immigration and Naturalization Service for New York City; HENRY KISSINGER, individually and as Secretary of State of the United States; LEONARD WALENTYNOWICZ, individually and as Administrator of the Bureau of Security and Consular Affairs, Department of State, JULIO ARIAS, individually and as Director of Visa Office, Bureau of Security and Consular Affairs, Department of State; CATHERINE M. HURLEY, individually and as Consul of the United States of America, Santo Domingo, Dominican Republic.

Defendants.

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This cause having come to be heard before a three-judge court, the Honorable Leonard P. Moore, United States Circuit Judge, the Honorable Jack B. Weinstein, United States District Judge, and the Honorable Henry Bramwell, United States District Judge, presiding, and an opinion and order of the Honorable Leonard P. Moore, United States Circuit Judge, and the Honorable Henry Bramwell, United States District Judge, having been filed on November 28, 1975, denying the plaintiffs' motions for certification as a class action, summary judgment, and a permanent injunction, and granting judgment for the defendant, and a dissenting opinion of the Honorable Jack B. Weinstein, United States District Judge, having been filed on November 28, 1975, it is

ORDERED and ADJUDGED that the plaintiffs take nothing of the defendants and that the action is dimisssed.

Dated: Brooklyn, New York
December 1, 1975

/S/ LEWIS ORGEL
Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

(Title omitted in printing)

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that RAMON MARTIN FIALLO, an infant by his mother, CELIA FRANCISCA MICHAEL RODRIGUEZ, RAMON AUGUSTO RAFAEL FIALLO-SONE, CLEOPHUS RUPERT WARNER, SERGE PATRICK WARNER, an infant by his father CLEOPHUS RUPERT WARNER, TREVOR ASTON WILSON and EARL ANTONIO WILSON, infants by their Aunt LENA

HUDSON and ARTHUR CECIL WILSON, on behalf of themselves and all other persons similarly situated, the plaintiff-appellants in the above captioned action, hereby appeal to the Supreme Court of the United States from each and every part of the final order and judgment of the three judge court in the Eastern District of New York entered on December 1, 1975 denying plaintiffs motions for summary judgment, permanent injunction and class action certification, granting judgment for defendants and dismissing the action.

This appeal is taken pursuant to 28 U.S.C. §1253.

DATED: NEW YORK, NEW YORK
December 31, 1975.

KALMAN FINKEL
Attorney-in-Charge
The Legal Aid Society
Civil Division

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(Affidavit of Service omitted in printing)

SUPREME COURT OF THE UNITED STATES

No. 75–6297

Ramon Martin Fiallo, etc., et al.,
Appellants,

v.

Edward H. Levi, Individually and as Attorney General of the United States, et al.

APPEAL from the United States District Court for the Eastern District of New York.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted. The case is set for oral argument in tandem with No. 75–5952.

June 7, 1976

SUPREME COURT OF THE UNITED STATES

No. 75–6297

Ramon Martin Fiallo, etc., et al.,

Appellants,

v.

Edward H. Levi, Individually and as Attorney General of the United States, et al.

ON CONSIDERATION of the motion of the appellants for leave to proceed herein in forma pauperis,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted.

June 7, 1976